H.R. 5600, THE DISTRICT OF COLUMBIA COURT, OFFENDER SUPERVISION, PAROLE, AND PUBLIC DEFENDER EMPLOYEES EQUITY ACT OF 2008

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON

H.R. 5600

TO PERMIT NONJUDICIAL EMPLOYEES OF THE DISTRICT OF COLUMBIA COURTS, EMPLOYEES TRANSFERRED TO THE PRETRAIL SERVICES, PAROLE, ADULT PROBATION, AND OFFENDER SUPERVISION TRUSTEE, AND EMPLOYEES OF THE DISTRICT OF COLUMBIA PUBLIC DEFENDER SERVICE TO HAVE PERIODS OF SERVICE PERFORMED PRIOR TO THE ENACTMENT OF THE BALANCED BUDGET ACT OF 1997 INCLUDED AS PART OF THE YEARS OF SERVIVCE USED TO DETERMINE THE TIME AT WHICH SUCH EMPLOYEES ARE ELIGIBLE TO RETIRE UNDER CHAPTER 84 OF TITLE 5, UNITED STATES CODE, AND FOR OTHER PURPOSES

JULY 15, 2008

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H.R. 5600, THE DISTRICT OF COLUMBIA COURT, OFFENDER SUPERVISION, PAROLE, AND PUBLIC DEFENDER EMPLOYEES EQUITY ACT OF 2008

TUESDAY, JULY 15, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:39 p.m., in room 2154, Rayburn House Office Building, Hon. Danny K. Davis (chairman of the subcommittee) presiding.

Present: Representatives Davis, Norton, Cummings, and Marchant.

Staff present: William Miles, professional staff member; and Marcus A. Williams, clerk/press secretary.

Mr. DAVIS. We are going to move into our hearing on the District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008. The subcommittee will now come to order.

Welcome, Ranking Member Marchant, members of the subcommittee, hearing witnesses and all those in attendance, to the Subcommittee on the Federal Workforce, Postal Service, and District of Columbia's hearing entitled, "H.R. 5600, the District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008."

Hearing no objection, the Chair will ask unanimous consent to allow the testimonies of the following individuals: William L. Askew, Patrice Irick, Thomas T. Abraham, Kevin Brannon, Rodney C. Corbin, Shawn Edward Dickerson, Ricardo Green, Diana Miles, Linda Suzanne Rupard, Ardina Yvette Van, April Davis, Alicia Holder, Deborah Ward, Neville Campbell-Adams and George Hughson to be added to the record.

Hearing no objection, so ordered.

The Chair, ranking member and subcommittee members will each have 5 minutes to make opening statements, and all Members will have 3 days to submit statements for the record.

Hearing no objection, so ordered.

[The information referred to follows:]

District of Columbia Court of Appeals
500 Indiana Avenue, N. W.
Washington, D.C. 20001-2131

LINDA S. RUPARD
JUDICIAL ADMINISTRATIVE ASSISTANT
TO JUDGE JOHN R. FISHER

TELEPHONE (202) 879-2751

July 9, 2008

Marcus A. Williams
Subcommittee Clerk
Subcommittee on Federal Workforce, Postal Service
and the District of Columbia
United States House of Representatives
B-349A Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Williams:

I have been employed at the District of Columbia Court of Appeals as a full-time, nonjudicial employee since August 26, 1996. When the Balanced Budget Act of 1997 was enacted, several co-workers and I were informed that the years we had worked for the District of Columbia government before the date the Act commenced would not be considered creditable service towards our retirement under the Federal Employees' Retirement System (FERS).

My co-workers and I support the bill Ms. Eleanor Holmes Norton and Mr. Tom Davis introduced on March 12, 2008 – H.R. 5600, which would reinstate our "lost time." Please find below a list of our names, titles, addresses, start times, and signatures:

Thomas T. Abraham
Supervisory Case Manager
15923 Indian Hills Terrace
Derwood, MD 20855

Start Date September 30, 1996

Kevin Brannon
Courtroom Clerk/File Clerk
1736 Tulip Avenue
Forestville, MD 20747

Start Date February 22, 1993

Rodney C. Corbin
Staff Assistant
8501 Paragon Court
Upper Marlboro, MD 20772

Start Date September 1990-1992
May 1997-Present

Shawn Edward Dickerson
Courtroom Coordinator/File Clerk
222 E. Spring Street
Alexandria, VA 22301

Start Date April 23, 1990

Ricardo Green
Courtroom Clerk
9302 Fontana Drive
Lanham, MD 20706

Start Date February 27, 1989

Patrice Irick
Case Manager
16708 Holly Way
Accokeek, MD 20607

Start Date June 1990.

Diana Miles
Individual Case Manager
1735 Lyman Place, N.E.
Washington, D.C. 20002

Start Date October 16, 1989

Linda Suzanne Rupard
Judicial Administrative Assistant
4746 Willows Road
Chesapeake Beach, MD 20732

Start Date August 26, 1996

Ardina Yvette Van
Case Administrator
2724 Lorring Drive #203
Forestville, MD 20747

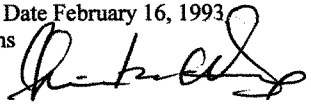
Start Date December 1987

Sincerely,

Linda S. Rupard

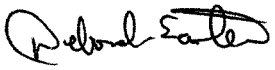
Christopher C. Dix
Deputy Director, Committee on Admissions
1425 11th Street, N.W., #301
Washington, D.C. 20001

Start Date February 16, 1993



Deborah Easter
Individual Case Manager
4950 Benning Road, S.E., #103
Washington, D.C. 20019

Start Date February 1993



Patrick S. Fagan
Special Assistant
1011 Stratwood Avenue
Oxon Hill, MD 20745

Start Date February 6, 1989

cc: Hon. Eleanor Holmes Norton
Hon. Tom Davis
Hon. Barbara A. Mikulski
Hon. Benjamin L. Cardin
Hon. Steny Hoyer

July 9, 2008

George Hughson
800 North Capitol Street NW
Washington, D.C. 20002

The Honorable House and Senate Members
UNITED STATES SENATE & UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D. C. 20510

In and for

The Subcommittee on Federal Workforce, Postal Service, and the District of Columbia

Greetings:

TESTIMONY relative to and in support of HR 5600

I thank you for the opportunity to express my thoughts and feelings about a serious matter concerning my federal retirement that was inadvertently harmed by previous legislation that was enacted quite some time ago.

This is a serious retirement problem I hope you or your staff can investigate and perhaps find a way to thereby resolve.

The history is as follows:

On August 29, 1988, I became a District of Columbia employee working as a Probation Officer for the Superior Court of the District of Columbia. I have had the exact same job since the beginning of my employment as a Probation Officer to the present. It is my understanding Congress funneled funds for the Superior Court of the District of Columbia through the payroll system of the Government of the District of Columbia. I was never a District of Columbia Government employee. But rather, I was an employee of the Superior Court of the District of Columbia that had its own separate and distinct employment rules and regulations along with their own career principles and practices and their own Personnel Office. All appointments and all personnel actions were totally and exclusively in control of the Superior Court of the District of Columbia and, of course, all of the Judges were and are Presidential appointees.

Since I was hired by the Superior Court of the District of Columbia and sworn in by the Clerk of the Superior Court of the District of Columbia, I have had the exact

same job since the beginning of my employment as a Probation Officer on August 29, 1988 to the present. My position is and was designated as Law Enforcement, which would allow retirement at twenty years of service as opposed to twenty-five years.

***The National Capital Revitalization and Self-Government Improvement Act of 1997*, established, within the executive branch of the Federal Government, the Court Services and Offender Supervision Agency, (herein referred to as CSOSA) which assumed its duties three years after the enactment of the Act. The Court Services and Offender Supervision Trustee effectuated the reorganization and transition of functions and funding relating to Pretrial Services, Public Defender Services, Department of Parole, and, *Adult Probation in the District of Columbia (taken involuntarily from the Superior Court of the District of Columbia).* During this transition period, the Trustee assembled the foundations essential for the Agency to assume its duties. The Court Services and Offender Supervision Trustee had the authority to appoint and set pay without regard to provisions of the District of Columbia Code governing appointments in the competitive service, and without regard to the provisions of Chapter 51 and subchapter II of Chapter 53 of Title 5, United States Code, relating to classification and General Schedule pay rates.**

On August 5, 2000, the Court Services and Offender Supervision Agency became an official Federal agency under the executive branch. (At that time I had twelve years of Government service.)

As might be the case under these circumstances, a vast number of memorandums and policy statements were issued. Recently, in reviewing these, I discovered a "Memorandum to All CSOSA Staff" dated August 17, 2000, that I (as well as approximately 100 others) was not to be given credit for my twelve years of District of Columbia Government service (viz. 1988 to 2000) and, additionally, would not be given credit for the previous Law Enforcement Status as was in effect with my quasi-District of Columbia Government service. I checked with a representative of the Human Resources Office and was advised this was just too bad and neither I nor anyone else could do anything about it. (And, true enough, the previous and current Senator for my State could do nothing about it.)

The reasons for this being wrong are fairly evident and are as follows:

1) **The decision on the part of CSOSA (*or the underlying rules or regulations as determined by the Office of Personnel Management or their interpretation of the rules or regulations*) to deny former District of Columbia employees of utilizing their years of prior government service to count year for year toward federal retirement for the exact same job is discriminatory, unfair, and capricious.**

a) **It is discriminatory as it singles out only former District of Columbia Government employees as their jobs and they were *involuntarily* converted to Federal Government employment.**
b) **It is unfair as it denies the former District of Columbia Government workers to entitlement of year for year service to be applied toward Federal retirement. It is unfair for one who has the identically same job to arbitrarily be denied his years of the former status as a Law Enforcement designee.**
c) **It is capricious in that it seems to impulsively deny recognition of prior government service for the same work and function to the citizens and the Government of the District of Columbia.**

2) **The decision on the part of CSOSA (*or the underlying rules or regulations as determined by the Office of Personnel Management or their interpretation of the rules or regulations)* and its effect on the retirement of dedicated government employees is so patently discriminatory, unfair, and capricious, that it should be corrected or addressed with legislative or administrative remedy.**

In summary, again, it is my view the problem is caused by the language of the law or omission of the language of the law that created this separate agency, which thereby caused my problem.

I thank you for your attention and interest in righting this wrong.

Signature:_____ **Date:** _____

Williams, Marcus

From: Askew, William [William.Askew@dcsc.gov]
Sent: Monday, July 14, 2008 2:55 PM
To: Williams, Marcus
Subject: FW: Revitalization Act and Retirement

Subject: Revitalization Act and Retirement

Due to my age and time in service I feel that the decision not to include all of my time with DC Superior Court is unfair. This change will affect my eligibility for retirement and benefits. I will be attending the hearing scheduled for July 15 to express my dissatisfaction on losing two years of my retirement. Some co-workers have lost from one year up to 9 years which is unjust.

July 9, 2008

One Hundred Tenth Congress
Congress of the United States
House of Representative
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Congresswoman Norton:

My name is Alicia Holder and I am a former employee of the District of Columbia Board of Parole. I was affected by the Revitalization Act of 1997, and was involuntarily separated from District of Columbia Government Service performed from 1991-1997. I was transferred to Federal Service resulting in the loss of creditable service under the Federal Employees' Retirement System (FERS) the Balanced Budget Act of 1997. Furthermore, I was not given the option of rolling the retirement funds into a Federal retirement account such as TSP. I was forced to take the money out of D.C. Retirement.

I pray that Congress would restore all my years of service performed for the District of Columbia Government from 1991 - 1997.

Respectfully,

Alicia Holder

Alicia Holder

Congress of the United States
House of Representatives
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Attention: Mr. Danny K. Davis, Chairman

In 1997 as a result of the federalization of the District of Columbia Superior Court's adult probation department I, Deborah Ward became a federal worker. At that time I was providing community supervision for adult offenders who were on probation. I had been working as a probation officer since April 21, 1991. Also, I had been working under the civil service retirement program from 1980 until 2000 and I am now covered under the Federal Employees Retirement System. I began my law enforcement/hazard duty retirement coverage in 1991 and after the federal take over I lost all of it. In order to get full law enforcement retirement benefits I must work for twenty years. Presently, I am fifty-five years of age and am ready to retire. In two years I will have thirty years of government service but not of hazard duty. If the lost time is restored I may be able to retire in three years with a full hazard duty retirement pension. I have worked hard as a public servant and I need all of the benefits offered in this line of work. Please restore the benefits.

Respectfully,

Deborah Ward
Community Supervision Officer
Court Services and Offender Supervision Agency for Washington DC

Williams, Marcus

From: Neville Campbell-Adams [Neville.Campbell-Adams@csosa.gov]
Sent: Wednesday, July 09, 2008 2:19 PM
To: Williams, Marcus
Subject: HR 5600

Mr. Williams,
The following is being forwarded to advise that the National Capital Revitalization and Self-Government Improvement Act of 1997 has impacted my eligibility to retire. I, Neville Campbell-Adams, began my service as a District of Columbia employee in December 1992. As a result of the National Capital Revitalization and Self-Government Improvement Act of 1997 my D.C Government functions were transferred to the Court Services and Offender Supervision Agency. In turn four to five years of service have been lost which will require me to work an additional four to five years before becoming eligible to retire. It would be greatly appreciated if HR 5600 can restore the lost time I have incurred due to the agency conversion. I currently have a total of 15 years of service.

July 9, 2008

Leon C. Johnson
Community Supervision Officer
800 North Capitol Street, N.W.
Second Floor
Washington, D.C. 20002

The Honorable House and Senate Members
United States Senate & United States House
Of Representatives
Washington, D.C. 20510

In and for

The subcommittee on Federal Workforce, Postal Service, and the District of Columbia

Dear House and Senate Members:

Testimony relative to and in support of Bill HR 5600

I sincerely thank House and Senate Members for the opportunity to disclose my thoughts pertaining to a severe matter concerning to my Federal Retirement problem, which I trust your staff can research, analyze, and thereby resolve in a positive manner.

On July 31, 1989 I came to work as a probation officer at D.C. Superior Court in Washington, D.C. from the United States Census Bureau's Regional Officer located in Philadelphia, PA where I was employed as a geographer for several years. Prior to my employment with D.C. Superior Court I was informed that the Court was funded by Congress; consequently, I would not be D.C. Government employee. Also, I was told by personnel my leave from the United States Census Bureau and my salary would be transferred to my new job without modifications. Furthermore, I was informed my new job as a probation officer would be designated as Law Enforcement, which would allow me to retire in 20 years.

The National Capital Revitalization and Self – Government Acts of 1997, which established the Court Services and Offender Supervision Agency (CSOSA), placed this organization as a Federal Law Enforcement Agency. Thus, a memorandum to all CSOSA staff dated August 17, 2000 indicated that I and approximately 100 others would lose their previous credit of employment towards their Federal Law Enforcement service. As of today's date I have been working 19 years with D.C.

Superior Court and CSOSA combined. Thus, I would be eligible for retirement in July 2009 with full Law Enforcement retirement if my previous 11 years were not eliminated. I am 63 years old and with the Revitalization Guidelines I will have to work at least nine more years before I can retire will full benefits. I have over 20 years of work experience in the Federal Government, and earlier this year I received a commendation pin for 20 years of Federal Government Service, which includes my Census Bureau, D.C. Government and CSOSA employment.

Again in July 2009 I will have 20 years of Law Enforcement work experience; consequently, I believe the loss of my D.C. Superior Court time is inequitable, and a great disservice to me personally, and my colleagues. Therefore, I am requesting House and Senate Members overturn this arbitrary ruling and restore credit for years lost, which were enacted by this negative, biased, and unjust decision. American citizens have a right to protest injustice, and losing time for the years I have worked quite hard for is truly a travesty of justice.

Mr. DAVIS. I will read a brief opening statement.

Today, the subcommittee is holding a hearing to examine H.R. 5600, the District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008. The bill, which was introduced by Representative Eleanor Holmes Norton on March 12, 2008, would permit former D.C. government and independent agency employees to count the years of service they performed prior to 1997 toward their Federal creditable service which determines an individual's eligibility for retirement.

Passage of the National Capital Revitalization and Self-Government Improvement Act of 1997 brought about a transfer of several of the District's criminal justice functions to the Federal Government, which has adversely impacted hundreds of employees who lost their prior service time. These employees were forced to shift their source of employment as a result of the enactment of the 1997 Revitalization Act. People who for years performed functions and duties under the D.C. government banner found themselves seeking employment opportunities to do almost the same jobs, but on the Federal level.

Although many of the individuals were fortunate enough to secure employment with newly created Federal entities and are to become considered as Federal employees for the purpose of pay in benefits, none of these individuals were allowed to have their previous years of work included in the calculation of their creditable service which is used to determine an employee's eligibility for retirement under the Federal Employees Retirement Service.

What we are witnessing today are dozens of employees who would normally be ready for retirement being forced to work additional years, sometimes an entire decade, because of an inability to incorporate their previous years of related service. H.R. 5600 seeks to remedy this problem by allowing the service these Federal workers performed prior to 1997 to count as creditable service for the purpose of determining an employee's eligibility for retirement only and not an employee's annuity amount.

I understand that the bill may need some fine tuning to ensure that all affected persons and agencies are covered, and I anticipate that those issues will be addressed in some of the testimony being presented today.

The support that this bill has received from groups like the American Federation of Government Employees and the hundreds of employees affected highlights the importance of quickly moving this legislation toward enactment.

I thank Congresswoman Norton and Ranking Member Tom Davis for all the hard work they have put in on this issue over the past several years, and I also want to thank today's witnesses for participating in this afternoon's hearing.

I would now like to yield to Ranking Member Marchant for any opening comments that he would have.

[The prepared statement of Hon. Danny K. Davis and the text of H.R. 5600 follow:]

STATEMENT OF CHAIRMAN DANNY K. DAVIS
SUBCOMMITTEE ON FEDERAL WORKFORCE AND POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

HEARING ON

H. R. 5600, the "District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008."

OPENING STATEMENT

Today, the Subcommittee is holding a hearing to examine H.R. 5600, the District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008.

The bill, which was introduced by Rep. Eleanor Holmes Norton on March 12, 2008, would permit former D.C. government and independent agency employees to count the years of service they performed prior to 1997 towards their federal creditable service which determines an individual's eligibility for retirement. Passage of the "National Capital Revitalization and Self-Government

Improvement Act of 1997" brought about a transfer of several of the District's criminal justice functions to the Federal government, which has adversely impacted hundreds of employees who lost their prior service time.

These employees were forced to shift their source of employment as a result of the enactment of the 1997 Revitalization Act. People, who for years performed functions and duties under the D.C. government banner found themselves seeking employment opportunities to do almost the same jobs but on the federal level.

Although many of the individuals were fortunate enough to secure employment with newly created federal entities or to become considered as federal employees for the purpose of pay and benefits, none of these individuals were allowed to have their previous years of work included in the calculation of their 'creditable service,'

which is used to determine an employees eligibility for retirement under the Federal Employee Retirement Service (FERS).

What we are witnessing today are dozens of employees who would normally be ready for retirement being forced to work additional years, sometimes an entire decade, because of an inability to incorporate their previous years of related service.

H.R. 5600 seeks to remedy this problem by allowing the service these federal workers performed prior to 1997 to count as creditable service for the purpose of determining an employee's eligibility for retirement only and not an employee's annuity amount. I understand that the bill may need some fine tuning to ensure that all affected persons and agencies are covered and I anticipate that those issues will be addressed in some of the testimony being

presented today. The support that this bill has received from groups like, the American Federation of Government Employees (AFGE) and the hundreds of employees affected, highlights the importance of quickly moving this legislation towards enactment.

I thank Congresswoman Norton and Ranking Member Tom Davis for all the hard work they have put in on this issue over the past several years and also want to thank today's witnesses for participating in this afternoon's hearing.

I

110TH CONGRESS
2D SESSION

H. R. 5600

To permit nonjudicial employees of the District of Columbia courts, employees transferred to the Pretrial Services, Parole, Adult Probation, and Offender Supervision Trustee, and employees of the District of Columbia Public Defender Service to have periods of service performed prior to the enactment of the Balanced Budget Act of 1997 included as part of the years of service used to determine the time at which such employees are eligible to retire under chapter 84 of title 5, United States Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2008

Ms. NORTON (for herself and Mr. TOM DAVIS of Virginia) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

---

A BILL

To permit nonjudicial employees of the District of Columbia courts, employees transferred to the Pretrial Services, Parole, Adult Probation, and Offender Supervision Trustee, and employees of the District of Columbia Public Defender Service to have periods of service performed prior to the enactment of the Balanced Budget Act of 1997 included as part of the years of service used to determine the time at which such employees are eligible to retire under chapter 84 of title 5, United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008".

SEC. 2. RETIREMENT CREDIT FOR SERVICE OF CERTAIN EMPLOYEES TRANSFERRED FROM DISTRICT OF COLUMBIA SERVICE TO FEDERAL SERVICE.

(a) IN GENERAL.—Any individual serving as an employee or Member (as those terms are defined by section 8401 of title 5, United States Code) on or after the date of enactment of this Act who performed qualifying District of Columbia service shall be entitled to have such service included in calculating the individual's creditable service under section 8411 of title 5, United States Code, but only for purposes of the following provisions of such title:

(1) Section 8410 (relating to eligibility for annuity).

(2) Section 8412 (relating to immediate retirement).

(3) Section 8413 (relating to deferred retirement).

(4) Section 8414 (relating to early retirement).

(5) Subchapter IV of chapter 84 (relating to survivor annuities).

(6) Subchapter V of chapter 84 (relating to disability benefits).

(b) SERVICE NOT INCLUDED IN COMPUTING AMOUNT OF ANY ANNUITY.—Qualifying District of Columbia service shall not be taken into account for purposes of computing the amount of any benefit payable out of the Civil Service Retirement and Disability Fund.

SEC. 3. QUALIFYING DISTRICT OF COLUMBIA SERVICE DEFINED.

In this Act, "qualifying District of Columbia service" means any of the following:

(1) Service performed by an individual as a nonjudicial employee of the District of Columbia courts—

(A) which was performed prior to the effective date of the amendments made by section 11246(b) of the Balanced Budget Act of 1997; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(2) Service performed by an individual as an employee of an entity of the District of Columbia government whose functions were transferred to the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee under section 11232 of the Balanced Budget Act of 1997—

(A) which was performed prior to the effective date of the individual's coverage as an employee of the Federal Government under section 11232(f) of such Act; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(3) Service performed by an individual as an employee of the District of Columbia Public Defender Service—

(A) which was performed prior to the effective date of the amendments made by section 7(e) of the District of Columbia Courts and Justice Technical Corrections Act of 1998; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title

5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(4) In the case of an individual who was appointed to a position in the Federal Government under the priority consideration program established by the Bureau of Prisons under section 11203 of the Balanced Budget Act of 1997, service performed by the individual as an employee of the District of Columbia Department of Corrections—

(A) which was performed prior to the effective date of the individual's coverage as an employee of the Federal Government; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

SEC. 4. CERTIFICATION OF SERVICE.

The Office of Personnel Management shall accept the certification of the appropriate personnel official of the government of the District of Columbia concerning whether an individual performed qualifying District of Columbia service and the length of the period of such service the individual performed.

○

Mr. MARCHANT. Thank you, Mr. Chairman. As I understand it, House H.R. 5600 introduced by Congresswoman Norton and Congressman Tom Davis would restore retirement credit that certain employees lost when non-judicial employees became Federal employees as the Federal Government assumed the D.C. court function in 1997.

The context of the 1997 National Capital Revitalization and Self-Government Improvement Act is important. At the time, the city was beginning to recover from a spending and management crisis of epic proportion. Congressman Davis, who was then chairman of the District of Columbia Subcommittee, is to be commended for working in a truly bipartisan way with Delegate Eleanor Holmes Norton to address this crisis.

In 1997, with patience and perseverance, the Control Board created by Congress in 1995 was having its intended effect; much needed discipline was instilled into the budget process. The city's return to the private financial market was solid evidence that Congress did produce more creditable numbers and better performance.

The success of the Control Board made revitalization possible in 1997. The enactment included a fundamental restructuring of the relationship between the Federal Government and the Nation's Capital. Part of this massive restructuring included subtitle (c), criminal justice area. Also included in that was the Federal assumption of the costs associated with the District of Columbia courts, around $136 million in 1998. The Federal assumption of funding responsibility for the court system included probation, public defender services and pretrial services, which became a Federal agency.

The courts continue to be self-managed. The D.C. parole, probation and pretrial services were operated by a Federal trustee until they met the Federal standards to become a Federal agency. As a consequence of that, there was a loss of creditable service by former D.C. employees.

The legislation before us will rectify this by providing that service before the transfer of authority would count toward an overall Federal retirement eligibility as creditable service; the Public Defender was shifted in 1998, so they would get credit for any service prior to that; and included employees still entitled to D.C. and retirement benefits would be prohibited from double-dipping.

I appreciate the opportunity to have this hearing today and learn more about this issue.

Mr. Chairman, thank you.

[The prepared statement of Hon. Kenny Marchant follows:]

Statement of Ranking Member Kenny Marchant
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia

Hearing on H.R. 5600, the "District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008"
Tuesday, July 15, 2008

Thank you Chairman Davis for holding this hearing.

I understand that H.R. 5600, introduced by Congresswoman Norton and Congressman Tom Davis, would restore retirement credit that certain employees lost when non-judicial employees became federal employees as the federal government assumed D.C. Court functions in 1997.

The context of the 1997 National Capital Revitalization and Self-Government Improvement Act is important. At the time, the city was beginning to recover from a spending and management crisis of epic proportions.

Congressman Tom Davis, who was then Chairman of the District of Columbia Subcommittee, is to be commended for working in a truly bi-partisan way with D. C. Delegate Eleanor Holmes Norton to address these crises.

In 1997, with patience and perseverance, the Control Board created by Congress in 1995 was having its intended effect. Much-needed discipline was instilled into the City's budget process. The City's return to the private financial markets was solid evidence that what Congress did produced more credible numbers and better performance.

The success of the control board made Revitalization possible in 1997. The enactment included a fundamental restructuring of the relationship between the Federal government and the Nation's Capital. Part of this massive restructuring included, in Subtitle C, the criminal justice area. Also included in that was Federal assumption of costs associated with the District of Columbia courts, around $136 million for FY 1998. The Federal assumption of funding responsibility for the D.C. court system

included probation, public defender services and pre-trial services, which became a federal agency. The courts continued to be self-managed. The D.C. parole, probation, and pre-trial services were operated by a federal Trustee until they met federal standards to become a federal agency.

A consequence of that was the loss of "credible service" by the former D.C. employees. The legislation before us would rectify this by providing that service before the transfer of authority would count towards overall federal retirement eligibility as "credible service". The Public Defender Service was shifted in 1998, so they would get credit for any service prior thereto. And included employees still entitled to D.C. retirement benefits would be prohibited from "double dipping".

I appreciate the opportunity to discuss these issues at today's hearing and look forward to the testimony. Thank you Mr. Chairman.

Mr. DAVIS. Thank you very much, Mr. Marchant.

Let me ask if any other Members have opening comments.

Ms. Norton.

Ms. NORTON. Mr. Chairman, since this issue arose, I have put in a bill every year when Representative Davis was the Chair of the committee. He cosponsored it with me, and I am grateful that he has continued to cosponsor it now as ranking member.

Mr. Chairman, I have to say that not since I have been in Congress have I seen a technical oversight that has done such an accumulated injustice to a group of Americans. Nothing is more valuable to people than working your whole life and then deciding when to retire upon the time that is generally prescribed. Time cannot be recaptured. Whatever we do here, the failure to correct this error immediately will leave a terrible mark on the Congress.

As I shall indicate, there was no intent when we passed the Revitalization Act to punish or penalize any employee. In fact, the employees generally did not oppose the act, in no small part because of our guarantee that the act was designed to remove certain costs from the District of Columbia, State costs that no city bears, and that nobody was going to be hurt.

We did not keep our word, and if we were going to break our word, we certainly chose the worst of the benefits to do so because there are employees, now Federal employees, who will never be made whole, for no reason except the Congress did not act promptly.

You have outlined very clearly, Mr. Chairman—and I will not repeat—what this bill does. I will only say that these employees are only asking for the time they have already accumulated. They are asking for time they accumulated before the Revitalization Act was passed in 1997 and not one thing more.

They lost this time without any notice when the error was made, and they lost their so-called "creditable service." They became FERS employees—and the definition of "creditable service" there is somewhat different—and all it took was aligning these employees with the Federal employees they had become. It was the only decent thing to do.

I certainly don't blame this on the Republican minority that worked so closely with me on the Revitalization Act. Everybody worked together on that bill with the President of the United States, and yet this is, by far, its major flaw.

I just ask you, Mr. Chairman, suppose you were 60 years old at the time of the act and you had been an employee for 20 years working for the people of the District of Columbia. Does anyone think that you deserve to work 13 more years in order to retire? Can that case possibly be decently made by anyone?

Mr. Chairman, it has been very painful to see time accumulate, because it is like a ticking bomb. It is time; it is gone.

And I knew for a while that the Federal Government was not going to do anything to compensate these employees for having lost some of that time. For one thing, it would be difficult to figure out when people wanted to retire given the ADEA, the Age Discrimination Employment Act. If I may say so, if I myself had been in private practice, what would have occurred to me would have been to bring a suit under the Age Discrimination and Employment Act,

which in fact covers the Federal Government, because under that act you can work as long as you please. You cannot be made to retire. In fact, the whole point was to remove the government from the decision to retire; and I continue to believe there has been a violation by the Federal Government of the ADEA.

What makes it particularly painful is that the bill has been at pains to eliminate the possibility of double-dipping.

Nor have these employees asked to be credited with funds from the Federal Government during the period before they serve—only the time served. They have the annuity from the District Government. They are not asking for anything from us that they do not deserve; they are asking for their time.

If we want to add insult to injury, we can argue that the Federal Government incurs some financial liability here.

Now, if you really want to build on the nonremedial aspect, you might want to argue that, well, we are going to lose something in the Federal Government. That is palpable nonsense, Mr. Chairman. The argument might be made on the basis, well, the Federal Government is paying out this money—its share of the money, understand—at an earlier moment than it might have wished to.

Mr. Chairman, nobody knows when people are going to retire. The government doesn't know for 1 second when Federal employees will pick up their marbles and go home, and that is one of the reasons we are having such a problem in retaining Federal employees. They don't have the slightest idea. Once they reach the point of early retirement, they can say, Bye-bye, Federal Government, I am going to take this marvelous training, I am going to go work for a contractor, I am going to go home and sit; now just give me my money.

Under the ADEA, they can stay here until they are as old as Methuselah; and you don't know when they are going to retire and you had better not ask them. So any claim that somehow you are calling on Federal money before you are supposed to assumes that there was a time you were supposed to.

If anything, the Federal Government ought to be here with an apology rather than any resistance to this bill. It makes me mad and I am not even involved. I would hate to be somebody who was supposed to retire any time during this interval and be told, you just sit tight as long as we say so. Or worse, sit tight for X number of years; you will be the only Federal employees who are so required. And that is why I say it is a violation of the ADEA.

The least we can do, Mr. Chairman, is to do what I hope we will do here today. Hear everyone out, rapidly pass this bill before this session, which is due to end somewhat earlier than usual, do so with an apology to these employees, and try never to repeat this kind of error again.

I do want to note for the record that anyone who argues that there was any intent to, in fact, deprive these employees of their service needs to cite the record from the Revitalization Act to this committee. Because I will cite to them exactly the opposite in the act and in its report.

We have made a promise to these employees. We need this transfer. We know you are nervous. Not to worry. This is the sacred promise of the Federal Government of the United States; and we

then proceeded to break it. Let's try to make these employees as whole as we can, for they shall never be whole, but as whole as we can by not depriving them of another minute of service time to which they are entitled.

And I thank you, Mr. Chairman.

Mr. DAVIS. Thank you very much, Ms. Norton. Thank you very much.

Mr. Cummings.

Mr. CUMMINGS. Mr. Chairman, I just want to associate myself with the words of the distinguished representative from the District of Columbia.

You know, Mr. Chairman, I often say that we have one life to live and this is no dress rehearsal; this is that life. When people have worked hard and have given their blood, their sweat, and their tears to make it possible for others to live the best life that they can, they should not be deprived of that which is due them. We are not doing them any big favor, just giving them what they have earned.

And so, I am excited about this legislation and I just hope that we can get it pushed over the line as fast as we possibly can so that these folks can get what they have earned.

And with that Mr. Chairman. I yield back.

[The prepared statement of Hon. Elijah E. Cummings follows:]

CONGRESSMAN ELIJAH E. CUMMINGS OF MARYLAND
OPENING STATEMENT

"H.R. 5600, THE DISTRICT OF COLUMBIA COURT, OFFENDER SUPERVISION, PAROLE, AND PUBLIC DEFENDER EMPLOYEES EQUITY ACT OF 2008"

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND THE DISTRICT OF COLUMBIA

TUESDAY, JULY 15, 2008

Mr. Chairman,

Thank you for holding this important hearing to consider H.R. 5600, the "District of Columbia Court, Offender Supervision, Parole, and Pubic Defender Employees Equity Act of 2008."

I appreciate the opportunity to consider legislation that will provide D.C. employees with the benefits they deserve.

As you know, Congress in 1997 enacted the "National Capitol Revitalization and Self-Government Improvement Act," granting the federal government oversight authority and fiduciary control over certain D.C. services.

The rationale behind this act was to shift the burden of certain services that are typically funded by states to the federal government, to lift the weight off D.C. City government.

In the switch, several D.C. employees in the courts and corrections departments became federal employees for the first time.

This had the unintended consequence of denying certain workers their ability to claim several years of service under the D.C. government for the purposes of benefits in their new role as federal employees.

In some instances, individuals who would otherwise be eligible for retirement are being forced to continue to work because the federal government does not recognize their years of service prior to the 1997 law's enactment.

H.R. 5600 addresses this issue by requiring that time served by former D.C. employees is counted towards their overall eligibility as credible service.

Specifically, the bill allows for time served prior to 1997 to be considered for the following purposes: (1) annuity, (2) immediate retirement, (3) deferred retirement, (4) early retirement, (5) survivor annuities, and (6) disability benefits.

Further, the bill clearly defines what is considered "qualifying District of Columbia service," and outlines the process by which an employee's years of service under the D.C. government should be certified for inclusion in an employee's credible service.

I think these changes are only fair, and I appreciate the Chairman's attention to this critical matter through this Committee's consideration of H.R. 5600.

I look forward to the testimonies of today's witnesses and yield back the balance of my time.

ELIJAH E. CUMMINGS
Member of Congress

QUESTIONS

The following witnesses will testify in two panels.

Panel I

Ms. Linda Springer
Director, Office of Personnel Management

Ms. Springer, I am concerned that if we do not pass H.R. 5600 and give D.C. workers the benefits they have earned, potential employees will be deterred from entering the D.C. workforce because they will see how we have mistreated current employees.

- Has OPM received much feedback from current and potential employees on this matter?

- What are you hearing from the individual agencies—are they frustrated by the disparity?

I understand that while the agencies affected and their subsequent employees have expressed support for H.R. 5600, recent concerns have been raised about the bill's possible cost if the federal government must begin paying potential retirees an annuity earlier than expected.

- Does OPM have an idea of what the cost might be?

Panel II

Ms. Anne Wicks
Executive Director, D.C. Superior Court

Mr. Paul Quander
Director, Court Services & Offender Supervision Agency

Ms. Avis E. Buchannan
Director, Public Defender Service for the District of Columbia

Ms. Wicks, according to your written testimony, "...More than 250 of the D.C. Courts' employees have lost up to 10 years of government service ... These individuals represent over one-quarter, or 26 percent, of the Courts' current employees."

- What has this done to the employees' morale?

- How do you think the Court will fare in attracting new employees if we fail to rectify this situation for current employees?

Ms. Wicks, you indicated in your written testimony that D.C. employees are not seeking additional federal retirement benefits for the years they served prior to 1997—they paid into the D.C. system for those years—instead they are simply seeking to be eligible to retire.

- Do you think this addresses the concerns expressed by some over the costs of H.R. 5600—if the employees will be getting no federal benefits beyond that to which they are already entitled?

Mr. DAVIS. Thank you very much, Mr. Cummings.

And I would ask unanimous consent that Members would have 3 legislative days in which to revise and extend their remarks.

Hearing no objection, so ordered.

And we now would move to our witnesses.

Our first witness will be Ms. Nancy Kichak. She was named Associate Director for the Human Resources Policy Division of the Office of Personnel Management [OPM], in September 2005. Ms. Kichak leads the design, development and implementation of innovative, flexible and merit-based human resource policies; and we are delighted to have her here to testify, as she does so regularly with us, from the Office of Personnel Management.

If you would stand, it is the tradition of this committee that witnesses be sworn in.

[Witness sworn.]

Mr. DAVIS. The record will show that the witness answered in the affirmative.

Ms. Kichak, if you would, summarize for us in 5 minutes your written statement, which will be in the record. We get down to the lights, that they are now working. The yellow light is an indication that there is a minute in which to wrap up.

Thank you so very much. We appreciate your being here. Please proceed.

STATEMENT OF NANCY H. KICHAK, ASSOCIATE DIRECTOR FOR STRATEGIC HUMAN RESOURCES POLICY, U.S. OFFICE OF PERSONNEL MANAGEMENT

Ms. KICHAK. Good afternoon, Mr. Chairman, Ranking Member Marchant, and members of the subcommittee. I appreciate the opportunity to be here today to discuss the proposed bill, H.R. 5600.

The National Capital Revitalization and Self-Government Improvement Act of 1997, as amended, which was part of the Balanced Budget Act of 1997, stipulated the four groups of civil service servants have their future retirement coverage covered by the Federal Employees Retirement Systems [FERS]. The four employee groups were as follows: nonjudicial employees of the District of Columbia of Columbia courts; employees whose functions were transferred to the pretrial services, parole, adult supervision, and offender supervision trustee; employees of the Public Defender Service hired before enactment of the District of Columbia Courts and Justice Technical Corrections Act of 1998; and individuals appointed under the priority consideration program of the Bureau of Prisons.

Prior to placement in the first system, these employees were covered by a defined contribution retirement plan similar in nature and benefit level to the Thrift Savings Plan. Upon the bill's enactment, these employees retained their defined contribution plan benefits from the District of Columbia, and those who did not have sufficient time for vesting under the D.C. defined contribution retirement plan were permitted to count their subsequent service so as to achieve vesting, ensuring that no benefits were lost due to this legislation. Instead, employee benefits were increased by providing coverage under a defined benefit plan based on years of service while continuing participation in a defined contribution

plan and coverage under Social Security. Also, health benefits were now provided that continue into retirement.

Under FERS, individuals are eligible to retire with a minimum of 5 years of FERS-covered service as age 62 without a reduction to their annuities. An individual with at least 10 years of FERS covered service may retire at the minimum retirement age with a slight reduction. The minimum retirement age is between ages 55 and 57, depending upon the individual's date of birth.

As it has been 11 years since passage of Public Law 105–33, the individuals covered by H.R. 5600 will be eligible to take advantage of the first provision for those with 10 years of service, once they reach their minimum retirement age, and will be eligible to retire without a reduction upon reaching age 62. H.R. 5600 will not modify the computational structure applicable to their employment under FERS, nor will it make their prior service creditable toward the computation of FERS benefits. However, it will permit that service to be creditable solely for the purpose of eligibility for annuity so that affected individuals will be permitted to retire at the time that they would have been eligible had all of their service been performed under a single system.

These provisions increase costs to the retirement fund through the early provision of benefits and thus the loss of employee-employer contributions equal to 12 percent of salary. The proposed legislation makes no provision for funding these costs.

A number of the individuals covered by this bill are currently employed in positions as law enforcement officers. As drafted, H.R. 5600 would not make the prior District service creditable toward early retirement as a law enforcement officer because the proposed bill does not define this service as creditable under the law enforcement officer provisions.

If law enforcement credit were granted, costs for these employees would be significantly higher due to the more generous benefit structure and the loss of employer and employee contributions at a rate of 26.2 percent of pay. Full cost funding is an important principle of the first system, and we believe the provisions of H.R. 5600 should be in compliance with this principle.

In conclusion, we have policy and financial concerns with aspects of this proposal, and accordingly, we cannot support it.

Thank you for inviting me here to testify today. I would be glad to answer any questions.

Mr. DAVIS. Thank you very much, Ms. Kichak.

[The prepared statement of Ms. Kichak follows:]

STATEMENT OF
NANCY H. KICHAK
ASSOCIATE DIRECTOR FOR STRATEGIC HUMAN RESOURCES POLICY
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

on

H.R. 5600: THE DISTRICT OF COLUMBIA COURT, OFFENDER SUPERVISION, PAROLE, AND PUBLIC DEFENDER EMPLOYEE EQUITY ACT OF 2008

July 15, 2008

Good afternoon, Mr. Chairman and members of the Subcommittee. I appreciate the opportunity to be here today to discuss H.R. 5600 the District of Columbia Court, Offender Supervision, Parole, and Public Defender Employee Equity Act of 2008.

The National Capital Revitalization and Self-Government Improvement Act of 1997, as amended, which was part of the Balanced Budget Act of 1997 (Public Law 105-33), stipulated that four groups of civil servants have their future retirement coverage provided by the Federal Employees' Retirement System. Previously, these employees received retirement coverage under the D.C. Retirement System. Some of the groups became employees of the Federal Government while others remained as employees of the District. The four employee groups covered by the 1997 law and the proposed H.R. 5600 include:

- Nonjudicial employees of the District of Columbia courts hired prior to the effective date of section 11246(b) of Public Law 105-33;

- Employees of an entity of the District of Columbia Government whose functions were transferred to the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee under section 11232 of the Public Law 105-33;

- Employees of the District of Columbia Public Defender Service hired prior to the effective date of the District of Columbia Courts and Justice Technical Corrections Act of 1998, Public Law 105-274; and

- Individuals who were appointed to a position in the Federal Government under the priority consideration program established by the Bureau of Prisons under section 11203 of the Balanced Budget Act of 1997 and were previously employed by the District of Columbia Department of Corrections.

Prior to the passage of Public Law 105-33, all four groups of employees listed in H.R. 5600 were District of Columbia employees, covered by the District retirement system. These D.C. employees were covered by a defined contribution retirement plan, similar in nature and benefit level to the Thrift Savings Plan. At the time of the 1997 bill's enactment, these employees retained their defined contribution plan benefits from the District of Columbia. Those who did not have sufficient time for vesting under the D.C. defined contribution retirement plan were permitted to count their subsequent service so as to achieve vesting.

These employees lost none of the benefits earned under the D.C. retirement system, while gaining the prospective benefit of being covered by the Federal Employees Retirement System (FERS) for their subsequent service. FERS coverage provides both a defined benefit based on years of service and health benefits that continue into retirement. In addition, FERS covered employees also receive a defined contribution benefit via the Thrift Savings Plan (TSP) and earn Social Security credits.

Many of these employees entered into coverage under FERS during the middle of their careers. By reason of this change, while they did become covered under a more beneficial retirement program, their previous service with the District of Columbia Government did not count toward either eligibility to retire under FERS or in the computation of the defined benefit portion of the annuity. While they will receive benefits under FERS proportionate to their FERS-covered service, they will have to wait somewhat longer to be eligible for those benefits than if their service had been performed under a single plan. In particular, they would generally have to wait until they are 62 in order to retire with an unreduced immediate annuity.

Under FERS, individuals are eligible to retire with a minimum of 5 years of FERS-covered service at 62, without a reduction to their annuities. An individual with at least 10 years of FERS-covered service may retire at the minimum retirement age with a slight reduction. The minimum retirement age is between ages 55 and 57, depending on the individual's date of birth. As it's been 11 years since the passage of Public Law 105-33,

the individuals covered by H.R. 5600 presumably have more than 10 years of FERS-covered service. These individuals would be eligible to retire without a reduction upon reaching age 62 or they may retire earlier, at the minimum retirement age, with a slight reduction. All their post 1997 years of FERS-covered service would count in the computation.

H.R. 5600 will not modify the computational structure applicable to their employment under FERS, nor will it make their prior service creditable towards the computation of FERS benefits. However, it will permit that service to be creditable solely for the purpose of eligibility for an annuity, so that affected individuals will be permitted to retire at the time that they would have been eligible had all of their service been performed under a single system.

According to statistics provided by the D.C. Government two years ago, there are approximately 247 employees working for the D.C. Superior Court who are covered by the version of the bill introduced in the 109th Congress. Of the employees in this group, 39 have law enforcement officer coverage under section 8412(d) of title 5, United States Code, and 208 are regular FERS employees. However, recent information indicates that these numbers may be somewhat understated. We do not at this time have the number of individuals in the Public Defenders Office or those who employed by the Bureau of Prisons.

We calculate that there is no substantive change in the net present value of the annuity benefits paid to individuals under this proposal for regular employees, because although their benefits will begin earlier, they will not receive cost-of-living adjustments (COLAs) until age 62. Further, if they waited to retire, the portion of their annuities based upon this service would be computed using a larger high-3 average salary. However, because the Retirement Fund will not be receiving the 12 percent employee and employer contributions for the period during which individuals would have continued working, that amount represents an increase in costs under this bill. It is difficult to give an actual total cost estimate at this time because it is difficult to ascertain how much earlier individuals will actually retire, and we do not have complete and accurate figures for the covered individuals, most particularly the correctional officers at the Bureau of Prisons.

As noted earlier, a number of the individuals covered by this bill are currently employed in positions as Law Enforcement Officers. As drafted, H.R. 5600 would not make the prior District service creditable towards early retirement as a Law Enforcement Officer because it defines the service only as creditable under 5 U.S.C 8411, but does not provide that it will be deemed to have met the definition of Law Enforcement Officer contained in 5 U.S.C. 8401(17), nor is a provision made for funding the additional cost this enhanced benefit would entail. If law enforcement credit was granted, costs for these employees would be significantly higher due to the more liberal benefits structure, and the loss of employer and employees contributions at the higher rate of 26.2 percent. Full cost funding is an important principle of the Federal Employees Retirement System, to which we believe the provisions of H.R. 5600 should be in compliance.

In conclusion, as noted, we have both policy and financial concerns with aspects of this proposal. Accordingly, we cannot support it.

Thank you again for inviting me here to testify today, and I would be glad to answer any questions you may have.

Mr. DAVIS. I am going to yield to the ranking member, Mr. Marchant, to begin the questioning.

Mr. MARCHANT. Thank you.

How does this bill prevent double-dipping by any of the employees that are still entitled to their D.C. retirement benefits?

Ms. KICHAK. Well, the bill does not include their service in the first calculation. It only allows that service to be creditable to make them eligible. So they will not be paid twice or accrue a computation for the service; however, they will be able to start receiving their annuity earlier.

Mr. MARCHANT. I think you probably answered this question in your testimony.

The legislation is not revenue neutral.

Ms. KICHAK. That is correct.

Mr. MARCHANT. Has there been a computation made as to the cost to implement that would compensate and make it a neutral transaction for FERS?

Ms. KICHAK. Right now, the bill does not permit service to be computed the way it is drafted for law enforcement officer coverage. We think it was intent that is an unintended consequence, because we know a lot of these people are law enforcement officers. So we have done two computations.

Roughly speaking, and as was pointed out earlier, when you do these computations you have to assume, on average, when people will retire. Based on patterns of retirement for each law enforcement person covered, the increase in cost under this bill is roughly $50,000—roughly; and for employees not in law enforcement, about $2,500 per person.

Mr. MARCHANT. OK. So the $50,000 is per person?

Ms. KICHAK. For a law enforcement officer. They retire earlier, so they would start receiving their benefit earlier. They have a higher benefit computation in recognition of the fact that they have a shorter career.

And we lose revenue because, had they worked under the first system, there would have been contributions into the fund by both them, at a higher rate of pay, and their employer.

Mr. MARCHANT. Is there some precedent in the FERS system where any other instances like this have ever taken place?

Ms. KICHAK. We cannot identify any other similar instance.

Mr. MARCHANT. So is the bill drafted to where it does not set a precedent for——

Ms. KICHAK. We think that the bill would set precedent.

Mr. MARCHANT. OK. So your concern is that it sets precedent. And you have the——

Ms. KICHAK. And has a cost.

Mr. MARCHANT. And it has a cost. And the cost has to be defrayed in some way?

Ms. KICHAK. Yes.

Mr. MARCHANT. I think those are my questions, Madam Chair.

Ms. NORTON [presiding]. Thank you, Ms. Kichak, for your testimony.

Quoting from your testimony, page 3, "While they will receive," these employees—it is the next to last paragraph—"benefits under FERS proportionate to their FERS-covered service, they will have

to wait somewhat longer to be eligible for those benefits than if their service had been performed under a single plan."

I ask you to cite the authority in the legislative record for that statement. In other words, I am asking you, since this was an entirely new bill that had to be written out of whole cloth. You have given us an interpretation, therefore, without citing any authority for the interpretation that I have just indicated. That rather much summarizes your testimony.

Ms. KICHAK. OK. I don't have the specific cite under Title 5 with me, but it very clearly says that their service will be counted from the day they became covered under FERS. And we could point to that——

Ms. NORTON. Well, obviously that service will be counted from the time they were covered under FERS.

Ms. KICHAK. Right.

Ms. NORTON. This hearing goes to whether or not their service before being covered by FERS is to be given any credit.

Are you testifying that it was the intent of the Congress of the United States to deprive these employees of years of service they would have received had they remained subject to the authority of the District of Columbia? Is that your testimony here this morning?

Ms. KICHAK. No. My testimony is that the law, as it is currently written, gives credit only for the time they have served under the FERS system.

Ms. NORTON. Oh, you will have to supply for the record, if you would, what you are basing that on. If you are to cite a single sentence without looking at the entire bill is to invite us to ignore your testimony.

There was a great deal of testimony about what we were doing. The ranking member, Mr. Davis, was there; I was there every step of the way. I submit to you that the Congress was very clear that bringing these employees into the Federal sector would be without prejudice.

And I ask you to tell me whether or not, if we transferred Federal employees to another sector, we could possibly have done so without informing them of any losses. Are you therefore saying that these employees lost time and the Congress intended them to lose their service before their eligibility for retirement, before they were transferred to the Federal Government?

You are saying that was the intent of Congress?

Ms. KICHAK. I am not. I am not speaking about the intent of Congress. We administer the law as it is written in Title 5 today, and that is what we are basing it on.

Ms. NORTON. I suggest to you, Ms. Kichak, that you are citing a sentence from the law without looking at the entire record. I ask you to do this committee the service of looking at that record, if you would.

In any case, as I indicated, the record would include the statements, the promise of the Congress that it did not and would not deprive people of their eligibility for retirement.

Now, the notion that somehow or the other we intended that and that these employees would sit on their rights, is not only unpersuasive, it is incredible. And it is even worse to suggest that

the Congress of the United States would, in fact, deprive people of their retirement time without, in fact, so informing them.

Now, I could accept your testimony if you said, we made a mistake. But you have testified here that is what Congress intended, and you have done so without citing to me the entire record, including the parts of the record which indicated we intended to deprive these employees of nothing. So as long as you are going to cite a single sentence, it does seem to me you have to back that up with what it is Congress said in its fullness.

You concede that what happened with the law enforcement officers does not reflect what Congress intended, do you not?

Ms. KICHAK. What I meant to say was, I don't think that is what was meant by the folks that have drafted this bill. But I would need the changes in the legislation to verify that you wanted those changes made.

Ms. NORTON. Now, I read with interest the part of your testimony—this sentence: "If law enforcement credit was granted"—and I want to know if you would apply this to others as well. "If law enforcement credit was granted, costs for these employees would be significantly higher due to the more liberal benefits structure and the loss of employer and employee contributions at the higher rate." And you cited 26.2 percent.

Ms. KICHAK. Right.

Ms. NORTON. Is that your testimony with respect to the other employees?

Ms. KICHAK. For the other employees who are under the regular system, the loss of income is 12 percent in pension funding.

Ms. NORTON. Now, you may have heard my opening statement. I can understand the law enforcement at least a little better, because law enforcement retires earlier.

I would like to know the basis for your—what is it, 12 percent?

Mr. KICHAK. Twelve percent.

Ms. NORTON. Twelve percent. Would cost the FERS 12 percent?

Ms. KICHAK. Yes.

Ms. NORTON. I would like to know the basis for that statement.

Ms. KICHAK. Twelve percent is what is called the "normal cost" of the retirement system, and under FERS today——

Ms. NORTON. What do you know about the normal cost of these D.C. employees?

Now, they were in the FERS system. Did you ask what was the normal cost or normal retirement age when they were in the D.C. system, where they would have accumulated whatever expectation they would have had?

Ms. KICHAK. In the D.C. system, as a defined contribution plan, they could have, once they were vested, resigned at any time and taken their money out in an annuity or whatever, very similar to what you can do today under the Thrift Savings Plan. So they were at——

Ms. NORTON. And you are aware that the D.C. bill is a carryover from no Home Rule, so that this bill rather much reflects the thinking that the Congress put in effect at that time. Go ahead.

Ms. KICHAK. Well, my background, before I came to the job I currently have, was as the Chief Actuary at OPM. And "normal cost"

is a technical actuarial term based upon the future benefits, based on the average rates of decrement of folks in a system.

So the 12 percent normal cost is, indeed, based on averages, and it is based on the experience, and continually reviewed and updated of the—well, it is not 1.8 million in FERS, but of all of the hundreds of thousands of people in the FERS system. And under pension funding, FERS pension funding today, for every employee covered by FERS 12 percent is supposed to be contributed from the entry on duty until retirement; and the loss for giving folks credit toward retirement and not making that funding would cause an unfunded liability in the FERS system.

Ms. NORTON. Now, where in the record can you cite congressional concern that bringing these employees over would put a burden on the FERS system if, in fact, they came over with their time accumulated in the District?

Cite me to that part of the record.

Ms. KICHAK. The record there would be in the establishment of the FERS system, which was designed to be a fully funded system back when it was established.

Ms. NORTON. Would you explain why these employees are coming over to the FERS system in the first place?

Ms. KICHAK. Because the law stipulated that they would.

Ms. NORTON. Well, they are coming over in the FERS system. What about the D.C. system?

They came from a system like that in the District of Columbia; is that not true?

Ms. KICHAK. They came from a system in the District of Columbia whose service did not count toward their pension under FERS.

Ms. NORTON. No, that is your conclusion, please. That is what you have concluded.

I am asking, first of all, would all these employees come under the FERS system, the employees that are at issue here?

Ms. KICHAK. We believed that most of them would be, and that is how we analyzed that.

We have recently become aware in other statements we have seen, that some of these would be under CSRS offset; but we believe that most of them would be under FERS. And the data that we were provided by the district court was for folks that would be under FERS.

Ms. NORTON. And you concluded that they would be under FERS for what reason? Because they were under a FERS-type system in the District of Columbia?

Ms. KICHAK. No. Because they entered into our system and became covered under FERS after FERS was established.

FERS became the system——

Ms. NORTON. Wait a minute. FERS, our employees are no longer covered by FERS. Is that right?

Ms. KICHAK. Our employees are covered by FERS today.

Ms. NORTON. Excuse me. The opposite.

Ms. KICHAK. Right.

Ms. NORTON. These employees are now entering a FERS system.

Ms. KICHAK. Correct. Which has been the system——

Ms. NORTON. What kind of system were they in before?

Ms. KICHAK. They were in a defined contribution plan.

Ms. NORTON. Isn't that the point, Ms. Kichak? That they entered the District government and offered their service in a defined contribution plan?

Well, let me cite this example to you. The Federal Government went from a defined benefit to a defined contribution. Did any Federal employee suffer when the Federal Government changed over from one kind of plan to the other?

Ms. KICHAK. For folks hired——

Ms. NORTON. Was there any penalty to Federal employees when the Federal Government decided to make that very switch that you have just described?

Ms. KICHAK. No one who was covered by the Federal system, CSRS, that was in place when FERS was established was penalized. They were in a CSRS system, and they were in a Civil Service Retirement System and they stayed in a Civil Service Retirement System.

Ms. NORTON. Thank you, Ms. Kichak. That is my point.

The District of Columbia employees were in a system like CSRS. They come to the Federal Government. They do not ask for anything special except that they recognize they are coming into a system, a FERS system.

If your testimony is that Congress did not penalize any employees when they moved over from one retirement system to another, how can you offer testimony today that the Congress would have treated the District of Columbia employees, who are becoming Federal employees, any differently from what they treated the CSRS employees whom they were at pains to make sure were not penalized, as you have testified here today?

Ms. KICHAK. The folks from the D.C. system were in a defined contribution plan. Before enactment of this legislation, they did not have access to a defined benefit plan. They were not in the same system. They entered a new system.

Ms. NORTON. Aren't some of the employees of the District of Columbia under that very system, the FERS system, a FERS-type system?

Ms. KICHAK. The FERS system has three components. The FERS system has the defined contribution plan, which is Thrift, it has Social Security, and it has a defined benefit plan.

The employees impacted by this legislation had only two of those three. When they entered into the new system and became covered under FERS, they had an enhancement in benefits. It was an enhancement in benefits.

Ms. NORTON. Well, it is hard—and no one is asking for more benefits, Ms. Kichak. We are talking about time, and not benefits. They are not asking for a dime.

Now, your testimony about 12 percent I simply have to ask you about. Yes, you can do the actuarial 12 percent, but is it not the case that in point of fact that is the only way you have of doing it because you don't have a clue as to when people will retire?

Ms. KICHAK. For a large group, because——

Ms. NORTON. Excuse me, did you look at the District of Columbia group or did you look at the Federal group? Did you compare the District of Columbia group, and when they retired, with Federal

employees, and when they are likely to retire? Or did you look at FERS employees?

Ms. KICHAK. We looked at FERS employees. We don't have enough data for this specific group of people.

Ms. NORTON. You do have sufficient data. All you would have to do is ask the District of Columbia for it.

You wouldn't need it for these employees, but if you were trying to make some kind of fair assessment, what you might want to do is look at what their actuarial retirement age was in the District of Columbia, or years they were in the District of Columbia; at least make some kind of comparison that way, if that is what you wanted to stand on and did not want to stand on equal treatment with the way in which we treated CSRS people who came to FERS. And that is the heart of the matter.

Congress has indicated its intent. Because Congress did not—goodness, I am sorry, Mr. Chairman—because Congress did not penalize any Federal employee. And your testimony is here that although Congress did not penalize any Federal employee, it was quick to take time from employees of the District of Columbia who were in the exact situation of our own CSRS employees.

I submit to you, Ms. Kichak, unless you can supply some part of the record to justify your assertions, I do not believe that we can credit them here in this hearing.

I am going to give the chairman back his chair.

Mr. DAVIS [presiding]. Ms. Kichak, let me ask you, specifically related to law enforcement officers——

Ms. KICHAK. Yes.

Mr. DAVIS [continuing]. How do you separate them in terms of some concerns expressed from the other groupings of employees?

Ms. KICHAK. First of all, in my testimony, when we reviewed the legislation as it is drafted, and it talks about crediting service, it does not cite the service for law enforcement officers. So that was a point of information I would like you to understand.

But when we look at the activity of law enforcement officers, when we do our actuarial analysis and when we manage the trust funds, because they have different age and service requirements and, therefore, their retirement patterns are different—they can retire at ages that normal people can't—we look at the rates of retirement leaving the law enforcement service, etc., in our projections, and we look specifically at the law enforcement officer community.

We didn't look specifically at the District, but we looked at, I believe about 80,000 law enforcement officers in Federal service; and that is how we determined the average experience that we used to fund the system.

Mr. DAVIS. Wouldn't you say that the law enforcement officers in question relative to the District of Columbia, that they will find themselves at some disadvantage anyway, just by virtue of having been caught in the situation or the squeeze?

Ms. KICHAK. They would find themselves in the same situation as somebody who joined the law enforcement community from another State, from a State government or from the private sector at the age they entered the system. Those folks also would not have credit under the FERS system. They would be treated like some-

body who entered the service from another entity that wasn't Federal.

Mr. DAVIS. Can I ask you, even though you may not be in agreement with this particular legislation and all of the components of it, does OPM see any way that this group of employees can, as one might say, be made whole? Is there any way that they can end up at the end of their careers feeling that they somehow or another have not been cheated or disadvantaged?

Ms. KICHAK. Our concern in creating the precedent that was spoken about before is that there are other groups of folks who would be interested in being able to get credit for service that they served someplace else.

In fact, under the FERS legislation, one group that gets no credit for Federal service are those people who worked for the Federal Government, took their contributions out, and that doesn't count for them. So they don't have a provision today where they can buy back credit for that service. And I see those as similar, that if we start allowing people to get credit for time that they didn't contribute under FERS, then there are going to be challenges to funding the system.

The system was carefully designed to try to make it fully funded. And there are other people out there with the same concerns.

Mr. DAVIS. So it is sort of the Pandora's box syndrome——

Ms. KICHAK. Yes.

Mr. DAVIS [continuing]. In a sense? And I have always been amazed about how Pandora was looked at. And I have always said to myself that if you are just afraid of opening up a box that ought to be opened, then why not open it if the situation is required, if there should be some redress?

I hear that a lot in terms of Pandora's box, and you know, if one group gets it, then somebody else wants to be considered. It would just seem to me that as long as there is any form of inequity, or as long as there is some denial of justice and as long as there is some denial of due process or corrective action, then all of the Pandoras in the world will end up perhaps dying with some feeling that somehow or another they were short-changed because they happened to fall into a box.

And I understand the concept. It is not one that I agree with, but I certainly understand it and certainly hear it used a great deal that we are going to open up a can of worms. Well, if the can needs to be opened, then the worm has as much of a right as, you know, anything, anybody else. That is just my position, especially when I ask myself the question about fairness.

I often ask, is it fair for birds to eat worms? The reality is, if you asked the bird, you get one answer. Now, you turn around and ask the worm and you get another answer. And I am sure that the people here don't want to be viewed as worms. But it seems that they are in that position.

So let me thank you very much.

Mr. Marchant, do you have any other questions?

Mr. MARCHANT. Just one question. The bill can be implemented as drawn correctly, but with an appropriation attached to it?

Ms. KICHAK. An appropriation would solve the funding problem. If the bill is implemented as drawn, our interpretation of this lan-

guage would not credit the service under these entities in the District of Columbia with credit toward law enforcement officer service.

Mr. MARCHANT. So in order for what Ranking Member Davis, Delegate Norton, and the chairman want to do to accomplish——

Ms. KICHAK. Right.

Mr. MARCHANT [continuing]. The bill needs to be redrafted to be specific, in your opinion, to specifically cover these things?

Ms. KICHAK. If that is what they want. And we would be glad to provide technical assistance to show them where we think——

Mr. MARCHANT. And an appropriation attached to implement it.

Ms. KICHAK. We would recommend that should be done. There should be an appropriation.

Mr. MARCHANT. And that is your position?

Ms. KICHAK. Yes.

Mr. MARCHANT. OK. Thank you.

Mr. DAVIS. Thank you very much, Ms. Kichak. We appreciate your being here.

Ms. KICHAK. Thank you.

Mr. DAVIS. And as always, we thank you for your testimony.

Ms. KICHAK. Thank you.

Ms. NORTON. Mr. Chairman, could I have a followup question?

Mr. DAVIS. One. Yes.

Ms. NORTON. She testified—I am sorry, was your last testimony about money Congress would have to add?

Ms. KICHAK. When an unfunded liability is created in the pensions——

Ms. NORTON. You have a huge unfunded liability in every pension system, I know.

Ms. KICHAK. We don't have one in the FERS system.

In the CSRS system there was one, which was one of the reasons that Congress created the FERS system, to have a system that was fully funded.

Ms. NORTON. Well, of course this is a unique situation, because you are not starting at ground zero. You are bringing over people and putting them in the FERS system and leaving them without their time.

Ms. KICHAK. They retained their benefits that they had when——

Ms. NORTON. Obviously, that would be a violation of due process.

Look, because with the law enforcement employees, given your testimony, you really have struck a third rail there. I appreciate your testimony about how we probably intended to include law enforcement authority and that the bill does not include law enforcement sufficiently. They, of course, still have an enhanced retirement.

But is it your testimony that a law enforcement officer who would, I suppose, be entitled to retire in 20 years? And if that law enforcement officer hadn't made it, that law enforcement officer simply has to do what every other employee who switched over, simply continued to work until the 20-year in his case or her case time is met?

Ms. KICHAK. Yes. They would have to continue to work to get 20.

Ms. NORTON. Don't you see how at odds that is with Federal policy? We don't grant 20-year payouts to people, or enhanced benefits to people, simply because we like our police officers. A policy decision has been made about the likely fitness of an officer after that period of time.

You, administratively, now are requiring these officers, unless we fix the bill, to serve beyond the period of time that Congress has fixed for their service.

Yes, it is a benefit. Yes, there is good reason for them to, in fact, want this benefit. But like every city that does it, this benefit is not just a benefit, you have to have a policy reason for doing so. In this case, the policy reason for doing so has to do with the same reasons that we don't draft people in the armed services beyond a certain age.

I just want to say that for the record, Mr. Chairman, because I think that the testimony that law enforcement officers have to also serve this additional time affects not only the officers, but presumably the underlying mission that they happen to be serving.

I would like to ask you about your notion that this is a precedent and that somehow we are opening up a concern about similarly situated employees. Can you cite for me any instance in the history of our country where we have had the Federal Government to take responsibility for a mission that was formally performed by a local jurisdiction?

Ms. KICHAK. I don't have an example, no.

Ms. NORTON. Well, I submit that it could not happen, because only the District of Columbia is subject to the Home Rule jurisdiction and is subject to the ultimate jurisdiction of the Federal Government. And if there was some kind of transfer of funds from—I don't know, the city of Baltimore—some kind of transfer of jurisdiction that would interfere with the Federalist rights of Baltimore itself—and I cite that because if you want to cite precedent, you have to tell us how a Federal employee could then look to this change from the one local jurisdiction that the Federal Government constitutionally has any jurisdiction over as a precedent for what the Federal employee would be demanding.

Ms. KICHAK. When I was speaking of precedent, I was speaking of getting credit for service that is not covered under the FERS system.

Ms. NORTON. That is exactly what I am speaking of since these people are not asking for money.

Ms. KICHAK. Well, I was talking about credit for those——

Ms. NORTON. I want to know whether you can cite a precedent for that, or in the absence of a precedent, cite me a hypothetical.

I am a law professor. I will take a hypothetical of where you think a Federal employee might validly cite this for wanting the same or similar treatment.

Ms. KICHAK. I think people who have worked for the Federal Government and taken their money out and lost their coverage under FERS could say that if somebody that was transferred from the District of Columbia into Federal service——

Ms. NORTON. Who took no payout. Who took no payout. Who took no payout. These people are sitting on their money because the Federal Government won't let them go.

I mean, if you want to cite me a precedent, you had better be careful. These people have not taken payouts. Some are gone, with less money. I wouldn't call that the same kind of payout that Federal employees have taken.

I am sorry, Mr. Chairman, I just want to lay it on the record and ask this witness one question.

I will accept your hypothetical and I will have to accept it as a hypothetical because you have not cited me to the record where the intent of Congress is noted. You cited me to one sentence in the statute, and I can understand that.

But I would like to accept your notion for the moment and then ask you: Let's assume that you are right, that we either never intended it and that the record does not support my notion that we intended it, given what has occurred, so that there are employees now serving well beyond their retirement time; would you recommend to this committee that it take the appropriate action to correct this anomaly?

Ms. KICHAK. I am not making that recommendation.

Ms. NORTON. So I would rather have that answer than the answer that you would let this anomaly remain in place, fall where it may, and penalize hundreds of employees in the process.

So I am going to let you go without asking you to put that answer on the record. And thank you for your testimony.

Ms. KICHAK. Thank you.

Mr. DAVIS. Thank you very much, Ms. Kichak.

We will proceed to our second panel. And while we are establishing their presence, I will go ahead and introduce them.

Ms. Anne Wicks serves as the executive officer of the District of Columbia courts. Prior to her appointment, Ms. Wicks was the courts' acting chief financial officer from 1999 to 2000; deputy executive officer for court operations, 1997 to 1999; and deputy director for research and development, 1987 to 1999.

We also have Mr. Paul Quander, who is the first director of the Court Services and Offender Supervision Agency [CSOSA]. He has served in this capacity since 2002. CSOSA is responsible for supervising adults on probation, parole, and supervised release in the District of Columbia.

We have, also, Ms. Avis Buchanan, who has served as the director of the District's Public Defender Service for the past 3 years. She holds a Juris Doctorate degree, and has worked as a staff attorney for the Equal Employment Opportunity Project of the Washington Lawyers Committee for Civil Rights and Urban Affairs.

Let me thank all three of you. And if you would stand and be sworn in and raise your right hands.

[Witnesses sworn.]

Mr. DAVIS. The record will show that the witnesses answered in the affirmative.

We will then proceed with our testimony, if you would summarize your written statement in 5 minutes.

The yellow light indicates that you are down to 1 minute; and if you would then wrap up for us, the red light will indicate that your time is up.

And we will begin with you, Ms. Wicks.

STATEMENTS OF ANNE B. WICKS, EXECUTIVE OFFICER, DISTRICT OF COLUMBIA COURTS, ACCOMPANIED BY KATHY HOLIDAY CRAWFORD, PROBATION OFFICER, SOCIAL SERVICES DIVISION, DISTRICT OF COLUMBIA FAMILY COURT; PAUL A. QUANDER, JR., DIRECTOR, COURT SERVICES AND OFFENDER SUPERVISION AGENCY OF THE DISTRICT OF COLUMBIA; AND AVIS E. BUCHANAN, DIRECTOR, PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

STATEMENT OF ANNE B. WICKS

Ms. WICKS. Thank you.

Mr. Chairman, Congresswoman Norton, members of the subcommittee, I am Anne Wicks, executive officer of the District of Columbia courts. As executive officer, I am responsible for the administration of the courts, and the management of our 1,000 nonjudicial employees.

I am pleased to be here today to offer testimony on H.R. 5600.

Chief Judge Eric T. Washington of the D.C. Court of Appeals, and Chair of the court's policymaking body, the Joint Committee on Judicial Administration, has taken time from his schedule to be here, as well, in support of this legislation, which is of fundamental importance to the courts.

Also here today is Kathy Holiday Crawford, a probation officer with our Family Court Social Services Division.

As you are aware, law enforcement personnel are eligible to retire at age 50 with 20 years of service, and a mandatory retirement age of 57. Ms. Crawford has been a probation officer with the courts for 19 years. Because of the changes instituted with the 1997 D.C. Revitalization Act, Ms. Crawford will not be able to retire next year as she had anticipated, but must wait until 2017, at which time she will be beyond the mandatory retirement age, and will have served in a law enforcement position for over 28 years.

More than 250 of the D.C. courts' employees lost up to 10 years of government service, an unfair and unintended consequence of the Revitalization Act. These individuals comprise 26 percent of our work force. Discounting years of public service and work experience for such a huge segment of the courts' work force has had a significant negative impact on employee morale and employee-management relations.

Management has a responsibility to protect employee rights, pay a living wage, and provide health and retirement benefits. Unfortunately, as a result of the Revitalization Act, many of the courts' employees believe management has let them down.

H.R. 5600 would restore fairness to our retirement system and improve the morale of our work force. Employees of the courts who were hired prior to October 1, 1987 participated in the Civil Service Retirement System. Court employees hired between October 1 of 1987 and October 11, 1997 participated in the District of Columbia's retirement system. When the D.C. Revitalization Act was enacted, it provided that all court employees would be treated as Federal employees for the purposes of retirement. What the act did not provide was credit toward retirement for the years of service for those employees under the District's retirement system, that is, all employees hired by the D.C. courts between 1987 and 1997.

Although these 250 employees had worked for the courts for up to 10 years, and have continued through today to remain dedicated court employees 11 years later, the Revitalization Act imposed on them an artificial change in their employment status, resulting in the loss of valuable time and credit toward retirement.

Consider how this works. An employee hired in September 1987 was under the Civil Service Retirement System, and today has nearly 21 years of service when computing retirement eligibility. An employee hired 1 month later, in October 1987, was under the District's retirement system, and today has only 11 years of service toward retirement. The reality, of course, is that both employees have worked for the D.C. courts for nearly 21 years.

The rationale for this decision, that the impacted employees participated in a different non-Federal retirement program, while logical, is neither practical nor fair. The fact is that up to 10 years of government work is being ignored when determining eligibility for retirement. The fact is that for these employees, their years of service with the courts and their years of service to the people of the District of Columbia are not being fully counted toward retirement.

We are not asking for these employees to be paid additional money. They paid into a different retirement system and will be entitled to their funds in that system when they retire. What we are asking for is that all the years of D.C. court employment be counted when retirement eligibility is calculated.

For an employee to have to work 6, 8, or 10 years more than their coworkers to be eligible to retire, solely by coincidence of when they are rehired, is patently unfair. To ignore years of an individual's work as a government employee in the justice system is particularly problematic for the courts. Imagine being responsible for ensuring justice and fairness, day in and day out, when you believe an injustice has been done to you. And imagine being responsible for managing these employees.

The vision statement of the D.C. courts is Open to All, Trusted by All, Justice for All. Our employees work each day to make those words true for all who walk through the courthouse doors. You can make them true for our employees as they approach retirement.

Thank you for your support on this important issue. Ms. Crawford and I would be happy to answer any questions you may have.

Mr. DAVIS. Thank you very much, Ms. Wicks.

[The prepared statement of Ms. Wicks follows:]

DISTRICT OF COLUMBIA COURTS

TESTIMONY OF ANNE B. WICKS
EXECUTIVE OFFICER
D.C. COURTS

ON H.R. 5600, THE DISTRICT OF COLUMBIA COURTS, OFFENDER SUPERVISION, PAROLE, AND PUBLIC DEFENDER EMPLOYEES EQUITY ACT OF 2008

BEFORE THE HOUSE SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

TUESDAY, JUNE 15, 2008

Open to All ♦ Trusted by All ♦ Justice for All

Mr. Chairman, Congresswoman Norton, Members of the Subcommittee, I am Anne B. Wicks, Executive Officer of the District of Columbia Courts. I am here today to offer testimony on H.R. 5600, the "District of Columbia Courts, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008." The District of Columbia Courts appreciate your efforts to ensure that *all* the years of public service provided by *all* of our employees will count for the purpose of determining eligibility for retirement.

I am accompanied today by Kathy Holiday Crawford, a Probation Officer with the Family Court Social Services Division. As you are probably aware, law enforcement personnel are eligible to retire after 20 years of service, with a mandatory retirement age of 57. Ms. Crawford has been a probation officer with the Courts for 19 years. Because of the changes instituted as part of the Revitalization Act, Ms. Crawford will not be able to retire next year as anticipated but must wait until 2017 – at which time she will be beyond the mandatory retirement age and will have served in a law enforcement position for over 28 years. While I can provide the reasons that this bill is necessary from the Courts' perspective, Kathy's written testimony illustrates just how dramatically the current statutory scheme affects individual employees.

More than 250 of the D.C. Courts' employees have lost up to 10 years of government service, an unfair and unintentional consequence of the 1997 D.C. Revitalization Act. These individuals represent over one-quarter, or 26%, of the Courts' current employees. To discount years of public service and court work experience for such a huge segment of our workforce has had a significant negative impact on employee morale and employee-management relations.

Management has a responsibility to protect employee rights, pay a living wage, and provide health and retirement benefits. Unfortunately, as a result of the Revitalization Act, many of the Courts' employees believe management has let them down. H.R. 5600 would restore fairness to our retirement system and significantly improve morale among our workforce.

Employees of the D.C. Courts who were hired prior to October 1, 1987 participated in the Civil Service Retirement System. Court employees hired between October 1, 1987 and October 11, 1997 were part of the District of Columbia's retirement system. When the D.C. Revitalization Act was passed in 1997, it provided that all court employees would be treated as federal employees for the purposes of retirement. What the Act did not do was to count, towards retirement, the years of service for employees who were under the District's retirement system -- that is, all employees hired by the Courts between 1987 and 1997. It was as though their employment with the Courts began when the Revitalization Act took effect. Although these 250 or so employees had worked for the D.C. Courts for up to 10 years, and have continued through today to remain dedicated court employees 11 years later – the Revitalization Act imposed on them an artificial change in their employment status, resulting in a loss of valuable time and credit towards retirement.

Consider how this works: An employee hired by the Courts in September 1987 would have been under the Civil Service Retirement System, and today has nearly 21 years of service when computing retirement eligibility. An employee hired one month later, in October 1987, would have been under the District retirement system for 10 years, and today has only 11 years of service toward retirement. The reality, of course, is that both employees have worked for the D.C. Courts for nearly 21 years.

The rationale for this decision – that these employees participated in a different, non-federal retirement program – while logical, is neither practical nor fair. The fact is that up to 10 years of government work is being ignored when determining eligibility for retirement. The fact is that, for these employees, their years of service with the D.C. Courts and their years of service to the people of the District of Columbia are not being fully counted towards the total that makes them eligible to retire.

We are not asking for these employees to get paid additional money from the federal government; they paid into a different retirement system (the District's system) and will be entitled to their funds in that system when they retire. What we are asking is for all the years of D.C. Court employment to be counted when retirement eligibility is calculated. For an employee to have to work six or eight or ten more years, many more years than their co-workers, to be eligible to retire, solely by coincidence of when they were hired, is patently unfair.

To ignore years of an individual's work contribution as a government employee in the justice system is particularly problematic for the D.C. Courts. Imagine being responsible for ensuring justice and fairness day in and day out when you believe an injustice has been done to you. Imagine being responsible for managing these employees.

The Courts have two minor technical changes to propose; changes that the Public Defender Service agrees with, and to which the Court Services and Offender Supervision Agency does not object. First, please include employees in the "CSRS Offset" program – that is, employees who were hired during the relevant 10 years and who had previous federal government service. The bill, as drafted, does not include these individuals who presently face the same inequity as those who were in the District's

retirement system. They represent a small percentage of the affected group.

Second, language is being requested to clarify what we understand to be the sponsors' intent, that Section 2(a) applies to employees of the District of Columbia Courts and the Public Defender Service. While these employees are statutorily required to be treated as federal employees for purposes of retirement,[1] they are not included in the FERS or CSRS definitions of "employee."[2] An explicit reference to these employees in Section 2(a) would clarify their coverage under the bill. I have attached proposed text that incorporates these two slight technical changes to the bill as introduced.

On behalf of the over 250 employees of the District of Columbia Courts whose years of service are being treated as though they do not exist and who are, therefore, required to work years longer than their colleagues to be eligible to retire, I strongly urge you to pass H.R. 5600. The vision of the D.C. Courts is to be "Open to All, Trusted by All, and to provide Justice for All." We would like to ensure that the injustice to our employees which was inadvertently caused by the Revitalization Act is corrected.

Mr. Chairman, Ms. Norton, thank you for your support for this much-needed legislation and for holding this hearing today. This is an issue of fundamental fairness to our employees and for that reason means a great deal to us. Ms. Crawford and I would be pleased to answer any questions you might have.

[1] Pub. L. Nos. 105-33, §11246(b)(1) (1997) and 105-274, §7(e)(1) (1998).
[2] 5 U.S.C. §§ 8401(11), 8331(1).

ATTACHMENT - Suggested bill text:

A BILL

To permit nonjudicial employees of the District of Columbia courts, employees transferred to the Pretrial Services, Parole, Adult Probation, and Offender Supervision Trustee, and employees of the District of Columbia Public Defender Service to have periods of service performed prior to the enactment of the Balanced Budget Act of 1997 included as part of the years of service used to determine the time at which such employees are eligible to retire under chapters *83 and* 84 of title 5, United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008'.

SEC. 2. RETIREMENT CREDIT FOR SERVICE OF CERTAIN EMPLOYEES TRANSFERRED FROM DISTRICT OF COLUMBIA SERVICE TO FEDERAL SERVICE.

(a) In General- Any individual serving as an employee or Member (as those terms are defined by section *8331 or* 8401 of title 5, United States Code*), as an employee of the District of Columbia Courts, or the Public Defender Service of the District of Columbia,* on or after the date of enactment of this Act who performed qualifying District of Columbia service shall be entitled to have such service included in calculating the individual's creditable service under section *8332 or* 8411 of title 5, United States Code, *as applicable,* but only for purposes of the following provisions of such title:

(1) Section 8410 (relating to eligibility for annuity).
(2) Section *8336 or* 8412 (relating to immediate retirement).
(3) Section *8338 or* 8413 (relating to deferred retirement).
(4) Section 8414 (relating to early retirement).
(5) Subchapter IV of chapter 84 (relating to survivor annuities).
(6) Subchapter V of chapter 84 (relating to disability benefits).

(b) Service Not Included in Computing Amount of Any Annuity- Qualifying District of Columbia service shall not be taken into account for purposes of computing the amount of any benefit payable out of the Civil Service Retirement and Disability Fund.

SEC. 3. QUALIFYING DISTRICT OF COLUMBIA SERVICE DEFINED.

In this Act, `qualifying District of Columbia service' means any of the following:

(1) Service performed by an individual as a nonjudicial employee of the District of Columbia courts--

(A) which was performed prior to the effective date of the amendments made by section 11246(b) of the Balanced Budget Act of 1997; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(2) Service performed by an individual as an employee of an entity of the District of Columbia government whose functions were transferred to the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee under section 11232 of the Balanced Budget Act of 1997--

(A) which was performed prior to the effective date of the individual's coverage as an employee of the Federal Government under section 11232(f) of such Act; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(3) Service performed by an individual as an employee of the District of Columbia Public Defender Service--

(A) which was performed prior to the effective date of the amendments made by section 7(e) of the District of Columbia Courts and Justice Technical Corrections Act of 1998; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(4) In the case of an individual who was appointed to a position in the Federal Government under the priority consideration program established by the Bureau of Prisons under section 11203 of the Balanced Budget Act of 1997, service performed by the individual as an employee of the District of Columbia Department of Corrections--

(A) which was performed prior to the effective date of the individual's coverage as an employee of the Federal Government; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

SEC. 4. CERTIFICATION OF SERVICE.

The Office of Personnel Management shall accept the certification of the appropriate personnel official of the government of the District of Columbia concerning whether an individual performed qualifying District of Columbia service and the length of the period of such service the individual performed.

Mr. DAVIS. We will proceed to Mr. Quander.

STATEMENT OF PAUL A QUANDER, JR.

Mr. QUANDER. Good afternoon, Chairman Davis and members of the subcommittee.

H.R. 5600, the proposed District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008, would impact 106 employees of the Court Services and Offender Supervision Agency.

In both the Community Supervision Program, which provides probation and post-trial release supervision, and the Pretrial Services Agency, which provides pretrial supervision, a substantial number of employees remained with the agency and converted to Federal status following passage of the D.C. Revitalization Act in 1997. These employees would be affected by the proposed legislation.

In the Community Supervision Program, a total of 52 employees, or 5.6 percent of Community Supervision's total work force, would be affected. The majority of these staff are directly involved with offender supervision and are classified as law enforcement employees. Twenty-three of them, or 44 percent, are community supervision officers. An additional 12, or 28 percent, are supervisors, with one occupying a branch chief position. Five, or 10 percent, work in our Offender Processing Unit; the remaining 12 employees, 28 percent, hold a variety of support positions.

In the Pretrial Services Agency, a total of 54 employees, or 15 percent of PSA's total work force, would be affected. As with the Community Supervision Program, the majority of these employees are directly involved with supervision; 29, or 54 percent, are Pretrial Service Officers and, additionally, 11, or 20 percent, are supervisors.

Four employees, or 7 percent, work in the Forensic Toxicology Laboratory. The remaining 10 employees, or 19 percent, hold various program management or support positions.

Thank you for the opportunity to appear before this subcommittee, and I will be happy to answer any additional questions that you or members of the committee may have. Thank you.

Mr. DAVIS. Thank you very much, Mr. Quander.

[The prepared statement of Mr. Quander follows:]

STATEMENT

OF

PAUL A. QUANDER, JR.
DIRECTOR
COURT SERVICES AND OFFENDER SUPERVISION AGENCY
FOR THE DISTRICT OF COLUMBIA

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE,
AND THE DISTRICT OF COLUMBIA

JULY 15, 2008

Chairman Davis and Members of the Subcommittee:

HR 5600, the proposed "District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008," would impact 106 employees of the Court Services and Offender Supervision Agency.

In both the Community Supervision Program, which provides probation and post-release supervision, and the Pretrial Services Agency, which provides pretrial supervision, a substantial number of employees remained with the agency and converted to federal status following passage of the D.C. Revitalization Act in 1997. These employees would be affected by the proposed legislation.

In the Community Supervision Program (CSP), a total of 52 employees, or 5.6 percent of the CSP's total workforce, would be affected. The majority of these staff are directly involved with offender supervision and are classified as law enforcement employees. Twenty-three of them, or 44 percent, are Community Supervision Officers; an additional 12, or 28 percent, are supervisors, with one occupying a Branch Chief position; five, or 10 percent, work in our Offender Processing Unit. The remaining 12 employees (28 percent) hold a variety of support positions.

In the Pretrial Services Agency (PSA), a total of 54 employees, or 15 percent of PSA's total workforce, would be affected. As with CSP, the majority of these employees are directly involved with supervision: 29, or 54 percent, are Pretrial Services Officers; an additional eleven, or 20 percent, are supervisors. Four employees, or 7 percent, work in the Forensic Toxicology Laboratory. The remaining ten employees, or 19 percent, hold various program management or support positions.

Thank you for the opportunity to appear before the subcommittee. I will be happy to answer any additional questions you may have.

Mr. DAVIS. And we will go now to Ms. Buchanan.

STATEMENT OF AVIS E. BUCHANAN

Ms. BUCHANAN. Good afternoon, Chairman Davis, Congressman Marchant and Congresswoman Norton. I am Avis Buchanan, Director of the Public Defender Service for the District of Columbia for the last 4 years. Thank you for this invitation to testify before the subcommittee today in support of H.R. 5600.

The Public Defender Service for the District of Columbia is a federally funded, independent organization governed by a 11-member board of trustees. PDS is a federally funded entity as the result of the passage of the Balanced Budget Act of 1997 which, among other things, transferred fiscal responsibility for the District of Columbia's court functions to the Federal Government.

As part of that transfer, the employees of the Public Defender Service and other District of Columbia employees affiliated with the city's justice system became Federal employees solely for the purpose of the applicability of several employee benefits provisions in Title 5 of the United States Code. One of these benefits, participation in the Federal Retirement System, is the subject of H.R. 5600.

PDS supports H.R. 5600, as it will eliminate an inequity for certain current and former PDS employees and certain District of Columbia court employees related to their retirement eligibility. My comments focus on former and current PDS employees; however, the courts' employees' circumstances are analogous.

PDS employees participated in the Civil Service Retirement System until October 1, 1987, when the District of Columbia reorganized its personnel functions and practices. In addition, the Federal Employees Retirement System [FERS], was created that same year. From October 1, 1987, on, newly hired PDS employees were deemed ineligible to enroll in CSRS or FERS. After the District created the District of Columbia Defined Contribution Plan, PDS employees were permitted to participate in that program.

In 1999, the Balanced Budget Act and the technical corrections thereto ended PDS employees' participation in the District's plan and made FERS available to all PDS employees. Currently, these PDS employees do not receive credit toward their Federal retirement for any time they worked at PDS between 1987 and 1999.

H.R. 5600 permits PDS employees to count their qualifying years of service to determine eligibility for participation in FERS. These 24 current employees have waited several years for this inequity to be addressed. For some, this legislation could make the difference between retiring now and retiring as much as 12 years from now.

For one who died 3 years ago, 4 months short of his retirement eligibility, it has made the difference between an annuity for his surviving wife and no annuity at all.

PDS suggests that two technical corrections be made to the draft legislation. One correction will allow for consistent treatment for similarly situated PDS employees. The other will add clarity to Congress's intent to provide this retirement benefit to those employees.

First, current and former PDS employees who are enrolled in a third retirement plan, the Offset Civil Service Retirement System,

should be included in the group of employees contemplated by H.R. 5600. As noted, the legislation will allow current and former PDS employees to receive credit under FERS for service they performed prior to being covered by the Federal retirement provisions. H.R. 5600 does not, however, provide credit toward retirement for the same type of service by PDS employees who, because they had sufficient prior service under the Civil Service Retirement System, were placed under the Civil Service Retirement Offset retirement program rather than the FERS program. These employees should also receive credit for their qualifying service.

Second, current and former PDS employees should be explicitly referenced in section 2(a) of the legislation, because section 2(a) describes the legislation's intended beneficiaries. An express reference will make clear that current and former PDS employees are contemplated by this provision. Evidence that the legislation is intended to include current and former PDS employees is found in its title and in its prefatory language, but section 2(a), which describes the targeted employees, does not mention PDS employees.

In order to understand that current and former PDS employees are included in section 2(a), one must refer to three other statutory provisions: one within PDS's authorizing statute, D.C. Code, section 2–1605, subsection (c)(1), which makes PDS employees Federal employees for certain enumerated purposes, including Federal retirement; 5 U.S.C., section 8401, defining "employee" under FERS; and assuming PDS's above-requested amendment is made, 5 U.S.C., section 8331, defining "employee" under CSRS.

Neither of the two latter provisions specifically lists PDS. Naming PDS employees in section 2(a) will eliminate the need for reference beyond the four corners of this legislation.

With the above-described changes, this subcommittee will help PDS succeed in accomplishing the long-sought-after goal of obtaining for PDS employees appropriate credit toward their Federal retirement.

I appreciate the opportunity to present this testimony to the subcommittee. Thank you.

[The prepared statement of Ms. Buchanan follows:]

THE
PUBLIC
DEFENDER
SERVICE
for the District of Columbia

CHAMPIONS OF LIBERTY

Testimony of

Avis E. Buchanan
Director

Public Defender Service for the District of Columbia

before the

United States House of Representatives

Committee on Oversight and Government Reform

Before the Subcommittee on Federal Workforce, Postal Service and the District of Columbia

for the hearing entitled

"H.R. 5600: The District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008"

July 15, 2008

Statement by Avis E. Buchanan
Director
Public Defender Service for the District of Columbia

"H.R. 5600: The District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008"

July 15, 2008

I am Avis E. Buchanan, Director of the Public Defender Service for the District of Columbia. Thank you for the invitation to testify before the Subcommittee today in support of H.R. 5600, "The District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008."

The Public Defender Service for the District of Columbia (PDS) is a federally funded, independent organization governed by an eleven-member Board of Trustees. PDS was created by a federal statute[1] enacted to comply with a constitutional mandate to provide defense counsel to indigent individuals.[2] PDS is a federally funded entity as a result of the passage of the Balanced Budget Act of 1997, which, among other things, transferred financial responsibility for the District of Columbia's court functions to the federal government. As part of that transfer, the employees of the Public Defender Service and other District of Columbia employees affiliated with the city's justice system became federal government employees solely for purposes of the applicability of several federal employee benefits provisions in Title 5 of the United States Code. One of those benefits – participation in the federal retirement system – is the subject of H.R. 5600.

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[1] Pub. L. No. 91-358, Title III, § 301 (1970); *see also* D.C. Code § 2-1601, *et seq.*, 2001 ed.

[2] *Gideon v. Wainwright*, 372 U.S. 335 (1963).

PDS supports H.R. 5600, as it will eliminate an inequity for certain current and former PDS employees and for certain District of Columbia Courts employees, related to their retirement eligibility. My comments focus on former and current PDS employees, however, the Courts' employees' circumstances are analogous.

PDS employees participated in the Civil Service Retirement System until October 1, 1987, when the District of Columbia reorganized its personnel functions and practices.[3] In addition, the Federal Employees Retirement System (FERS) was created that same year. From October 1, 1987 on, newly hired PDS employees were deemed ineligible to enroll in CSRS or FERS. After the District created the District of Columbia Defined Contribution Plan, PDS employees were permitted to participate in that program. In 1999, the Balanced Budget Act and the technical corrections thereto ended PDS employees' participation in the District's plan and made FERS available to all PDS employees.[4] Currently, these PDS employees do not receive credit toward their federal retirement for any time they worked at PDS between 1987 and 1999.

H.R. 5600 permits PDS employees to count their qualifying years of service to determine eligibility for participation in FERS. These employees have waited several years for this inequity to be addressed.[5] For some, this legislation could make the difference between retiring now and retiring twelve years from now.

PDS suggests that two technical corrections be made to the draft legislation. One correction will allow for consistent treatment for similarly situated PDS employees; the

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[3] *See*, District of Columbia Government Comprehensive Merit Personnel Act of 1987, 1 D.C. Code § 601.01 *et seq.* 2006 ed.

[4] District of Columbia Courts employees entered FERS in 1997; PDS employees didn't enter FERS until 1999 because PDS's status was not resolved until the passage of the District of Columbia Courts and Justice Technical Corrections Act of 1998 (which amended the Balanced Budget Act); it went into effect on April 11, 1999.

[5] This affects approximately 24 current PDS employees.

other will add clarity to Congress's intent to provide this retirement benefit to those employees.

First, current and former PDS employees who are enrolled in a third federal retirement plan, the "Offset" Civil Service Retirement System, should be included in the group of employees contemplated by H.R. 5600. As noted, the legislation will allow current and former PDS employees to receive credit under FERS for service they performed prior to being covered by the federal retirement provisions. H.R. 5600 does not, however, provide credit toward retirement for the same type of service by PDS employees, who, because they had sufficient prior service under the Civil Service Retirement System,[6] were placed under the CSRS-Offset retirement program, rather than the FERS program. These employees should also receive credit for their qualifying service.

Second, current and former PDS employees should be explicitly referenced in section 2(a) of the legislation; because section 2(a) describes the legislation's intended beneficiaries, an express reference will make clear that current and former PDS employees are contemplated by this provision. Evidence that the legislation is intended to include current and former PDS employees is found in its title and its prefatory language, but section 2(a), which describes the targeted employees, does not mention PDS employees. In order to understand that current and former PDS employees are included in section 2(a), one must refer to three other statutory provisions – one within PDS's authorizing statute, D.C. Code § 2-1605 (c)(1), 2001 ed. (which makes PDS employees federal employees for certain enumerated purposes, including federal retirement), 5 U.S.C. § 8401 (defining "employee" under FERS), and, assuming PDS's

[6] An employee had to have five years of creditable CSRS service to be eligible for CSRS-Offset.

above-requested amendment is made, 5 U.S.C. §8331 (defining "employee" under CSRS). Neither of the two latter provisions specifically lists PDS. Naming PDS employees in section 2(a) will eliminate the need for reference beyond the "four corners" of the legislation.

With the above-described changes, this Subcommittee will help PDS succeed in accomplishing the long sought-after goal of obtaining for PDS employees appropriate credit toward their federal retirement. I appreciate the opportunity to present this testimony to the Subcommittee.

Mr. DAVIS. Thank you all very much. We certainly appreciate your testimony. Let me quickly begin with a question.

Ms. Wicks, your testimony highlights some of the challenges and consequences of being denied their total service years by employees who work under your supervision. What does this do for their morale, if you can make any assessment?

Ms. WICKS. Well, I would assume that it would improve employee morale. It has been a concern since 1997, when the act was passed, that the employees felt that they were sold out somehow and they were cheated somehow. This would go a long way in restoring their faith in management and their faith in the retirement system. So I think it would improve morale.

Mr. DAVIS. If H.R. 5600 was enacted, a number of your employees would become eligible for retirement. What do you think would actually happen?

Ms. WICKS. I am not certain as to the number who would be eligible, but the reality is that besides this negative aspect, let's say, of their employment, our employees typically are fairly satisfied with their jobs, and tend to have long careers with the courts. So I don't believe that it would cause a rush to retirement in any way.

Mr. DAVIS. Well, let me just ask this last question before I have to run off to vote—and Mr. Marchant, I am sure, will be running off to vote. But I understand that Kathy Holiday Crawford and other employees in her situation have expressed strong support for H.R. 5600.

If it was passed, or an amended version passed, would you expect many of these employees to retire immediately, or would many of these employees continue to provide services with reassurance that they are eligible for retirement? Since this applies directly to Ms. Crawford and other individuals in her situation, perhaps she would like to respond to that question.

STATEMENT OF KATHY HOLIDAY CRAWFORD

Ms. CRAWFORD. Thank you, Mr. Chairman. Thank you all for allowing me to speak today. First, I would like to say, if we are given back our years, I don't see that there will be a drastic departure to depart from the court. As I put in my statement, we enjoy the work that we do, but we would like to get the years back that we lost basically on the date that we were hired.

Mr. DAVIS. So you feel that you have actually given up something unnecessarily, through no fault of your own; and you would like very much to have it restored. Is that correct?

Ms. CRAWFORD. Yes, sir. I feel that something was taken from me. I did not lose years by choice. I lost my years by force.

Mr. DAVIS. Well, thank you very much. I am going to run vote.

Ms. Norton, perhaps you would just continue, and I will be back as soon as I finish voting.

Ms. NORTON [presiding]. For those of you from the District of Columbia, you can either regard this as a benefit or—a penalty that I am still here, because I shouldn't be, and I do not expect to be after the Senate gives us the vote we expect this very year. I simply want to get beyond some of the nomenclature that is generally used to describe the workers we are talking about.

Mr. Quander, you testified that the majority of the staff, I am looking at your testimony, involved with offender supervision are classified as law enforcement employees. Could you elaborate on that statement?

Mr. QUANDER. Yes. Many of the individuals that we identified are members of law enforcement. They have direct contact with offenders, individuals who have been a part of the criminal justice system who have been adjudicated, who have been convicted and——

Ms. NORTON. Are they peace officers?

Mr. QUANDER. They are akin to probation officers in the Federal Service. We have the authority to be armed; we are not, but we do have that authority. Technically, they are not peace officers, but they are law enforcement officers. They are in the homes. They are riding with the Metropolitan Police Department. They are doing law enforcement work at the highest level. They are putting their lives on the line every day——

Ms. NORTON. So they are doing the work of peace officers without the peace weapon?

Mr. QUANDER. Yes.

Ms. NORTON. Continue.

Mr. QUANDER [continuing]. With their skills.

And many people in the probation and parole area do this. They rely upon the skill set as opposed to weapons. They use the training that they have to talk to individuals. But it doesn't diminish the fact that they are dealing with individuals who, on occasion, may be unpredictable. So, safety is always in the back of every member's mind, their safety and the safety of others. It never leaves them.

So they are true law enforcement professionals.

Ms. NORTON. Are some of these former police officers.

Mr. QUANDER. Yes, they are.

Ms. NORTON. So their value to CSOSA has precisely been their law enforcement training then?

Mr. QUANDER. It complements what we want to do. A number of them have training in the military, as military police, as well as some members of the Metropolitan Police Department and other law enforcement organizations that are currently working with us at CSOSA.

Ms. NORTON. And their title is Community Supervision Officer?

Mr. QUANDER. Community Supervision Officers for CSOSA proper and Pretrial Services Officers for the pretrial component because they do many of the same functions as far as interaction with individuals who are pending, proper.

Ms. NORTON. Are those people with PDS?

Mr. QUANDER. No. They're with the Pretrial Services Agency [PSA].

We have so many initials floating around. But that's PSA, Pretrial Services, which is part of the umbrella.

Ms. NORTON. So they are also classified as law enforcement officers?

Mr. QUANDER. Yes.

Ms. NORTON. Are you continuing to, in filling these positions, try to find people who may have retired, for example, from law enforcement, from police work, former police work?

Mr. QUANDER. If they have the other qualifications, yes, because they have experience with the population that we are dealing with, they have an educational background.

Ms. NORTON. So you might want a young person if they had some law enforcement background and they applied for a job; that might be a desirable employee for a Community Supervision Officer?

Mr. QUANDER. Yes.

Ms. NORTON. Now, of course, they would be foolish to come in with the law as it is because they are treated differently from others with law enforcement training, isn't that true, with respect to their retirement benefits if they come into—or would they, in fact, go into FERS knowing full well that they were getting FERS?

Mr. QUANDER. They go into FERS knowing, but they will still be entitled to the same.

Ms. NORTON. But FERS is different for law enforcement officers?

Mr. QUANDER. No. I'm not the personnel expert, but it is my understanding that for a new employee coming into law enforcement for CSOSA, they will still be eligible for retirement with 20 years of service and age 50, with a mandatory retirement age of 57. So coming into that, they still have that. It is that group that came in after 1987 that is not covered.

Ms. NORTON. That's the cutoff point?

Mr. QUANDER. That's that area.

Ms. NORTON. You said that—you say in your testimony that 28 percent are supervisors. Would these supervisors also be law enforcement officers who have risen through the ranks?

Mr. QUANDER. Yes. Supervisors have law enforcement status. They go out and do accountability tours just as the CSOs do. They meet frequently with offenders, oftentimes the offenders who have problems, who are hostile.

The supervisors have a lot of experience, so they're on the front lines just as often; and it is a requirement that they actually go out and actually do home visits and do accountability tours and do other things with the staff. It is not just the staff that are out there; supervisors, as well.

Ms. NORTON. Just like police who go into people's homes except they don't have a gun. Forty-four percent are Community Supervision Officers, 28 percent are supervisors, so we have to add them, do we not, to the law enforcement number; is that not true?

Mr. QUANDER. Yes.

Ms. NORTON. And one is a branch chief. Don't we have to add him or her——

Mr. QUANDER. Her, yes.

Ms. NORTON [continuing]. To the number who are law enforcement officers and thus affected?

And finally 10 percent work in the Offender Processing Unit. Are they also law enforcement, classified as law enforcement officers?

Mr. QUANDER. Many of those individuals are also classified as law enforcement personnel because they're dealing with the offender population. At intake, they're getting a lot of information;

they have a lot of contact with the offender population. So I would suggest that the vast majority of that 10 percent are, in fact, law enforcement.

Ms. NORTON. So essentially what we're dealing with is a work force who, when it was with the District of Columbia, was hired for their law enforcement background, was trained with that background, take those risks—and you have testified, even more because they're not armed—but have been transferred over and are not treated precisely the same as they would have been treated had they remained with the District of Columbia?

Mr. QUANDER. Yes.

Ms. NORTON. Your testimony says, of the Pretrial Services Agency that you referred to earlier, 54 percent are Pretrial Services Officers. Let me ask you for the record, are these officers law enforcement or would they be classified as law enforcement officers?

Mr. QUANDER. Yes, they are.

Ms. NORTON. And what is their work specifically?

Mr. QUANDER. They perform a similar function, but the population that they serve are pretrial defendants—they have not been convicted of any criminal offenses, but they have been charged, and they have been placed under the supervision of the Pretrial Services Agency.

And they're employed by the Superior Court of the District of Columbia to provide supervision, to provide drug testing, to provide substance abuse treatment, to have regular contact with many of these individuals, to provide special programming for them, to ensure their return to court and their compliance with the conditions of release that have been imposed by a judge of the Superior Court.

Ms. NORTON. Do they work in the court?

Mr. QUANDER. Many of them do. Many of them are actually in the courtroom giving recommendations to the court on release conditions and background information. So many of them are in the court, and they have regular contact with the offender population that they serve.

Ms. NORTON. I've asked you to lay that out, Mr. Quander, because these titles, I think, hide the reason that these employees were, in fact, hired for those particular missions at the time they were hired. And it is important for Congress to be aware that these are law enforcement officers, because of the deference Congress always, always pays to the special circumstance of law enforcement officers—and if I may say so, I think particularly for officers who are unarmed and do work which exposes them to danger.

Ms. Wicks, you testified that the bill making the changes we propose—and we now know with some additional ones—would, if I can paraphrase you, restore faith in management and in the retirement system. I wish you to elaborate on that and tell me what effect you think it has had on court employees to have spent—how many years is it now since we passed this bill?

Ms. WICKS. Eleven years.

Ms. NORTON. Eleven years. What effect you think it has had on employees who have had to stay longer than they indicate they intended?

Ms. WICKS. From my perspective, it has obviously just had a really demoralizing effect on employees. And while they're there

every day doing their jobs, it is a constant point of dissatisfaction. And I think, just as I look at the room and see most of the audience behind me are court employees, it is clearly an issue of tremendous importance to them. It just makes it incredibly difficult, as well, to motivate people and talk about justice and talk about fairness and talk about treating the public with respect when they don't feel it comes their way. So I think it's been an underlying, continuous issue for them—maybe not one that they bring to the top of mind every day, but it's a sore subject.

Ms. NORTON. Well, you had to live with it and to live in anticipation of it is, of course, just as bad.

I had a question about the PDS employees, but the staff has given me some background that seems to me we have to look more closely into.

Let me ask all of you about those who have retired. What's going to happen or what has happened to those who have retired? Some people have retired anyway, haven't they?

Ms. WICKS. I assume, at least for the courts I assume they have. But I've truly not seen as many folks retire who were hired during that period of time, those lost years period from 1987 to 1997, as I have some of our longer-term employees, who were here prior to that time and were Civil Service.

Ms. NORTON. So you think the ones who were caught in that——

Ms. WICKS. I don't think they're retiring. They would leave our service before they would retire from it has been my experience.

Ms. NORTON. So you think they could be recruited to go elsewhere?

Ms. WICKS. Oh, absolutely. Absolutely.

Ms. NORTON. The chairman wanted to ask you, Ms. Buchanan, if you would provide the number—Mr. Quander has provided for us a breakdown of the employees who are affected—if you would provide us with the number of employees participating in the CSRS that would be affected by the changes now contained in H.R. 5600?

Ms. BUCHANAN. The number of employees is 24. It's cited in a footnote in our testimony, our written submission, footnote 5. And that's 24 current employees. We do not know how many former employees might be affected because we do not know what their subsequent employment histories have been since they left PDS.

Ms. NORTON. So all we can imagine is that at—your testimony, Ms. Wicks, is that there haven't been a lot of people who have taken the sacrifice of retiring without their benefits. Have they believed that Congress would, in fact, correct this matter and are they waiting in the hope that is exactly what is going to happen?

Ms. WICKS. Maybe Kathy can answer that better than I.

Ms. NORTON. I would be pleased to have any testimony from any of you who have any idea about that.

Ms. CRAWFORD. Actually, we have not been able to retire because, as it stands, we only have 11 years toward retirement. So financially, we cannot retire.

And actually this is an issue that we have been trying to get addressed over the years; and again I can only say, we thank you because we have at least gotten this far.

Now, if we get our years back, then of course it will be to each individual employee to go and sit with their family and decide what

they should do, whether they will retire or stay. But right now we are not eligible to retire because it's as if we have been employed only since 1997. So everybody who was at Court Social Services, which a lot of us are, in the hazardous-duty realm, we are not eligible to retire. We won't be eligible to retire until 2017.

Ms. NORTON. Are you saying that 2017 would be the earliest date any employee could retire?

Ms. CRAWFORD. Yes, that's the earliest date that we can retire.

Ms. NORTON. Because if you count the oldest age that is caught in this time warp, the oldest age would be held until what year?

Ms. CRAWFORD. 2017, because we would need 20 years of service under the first system, and our first retirement goes back to 1997.

Ms. NORTON. Do you have any idea what the age of some of these employees who will be held 20 years is?

Ms. CRAWFORD. Yes, ma'am, I do.

Ms. NORTON. Don't scream out a number, people. You don't need to incriminate yourselves. I'm just trying to get some sense.

Ms. CRAWFORD. We currently have employees in the hazardous duty of Court Social Services who are in their 60's, in their late 50's; and they have to work the additional years before they can retire.

Ms. NORTON. These employees are now in the Federal Employees Health System, aren't they?

Ms. CRAWFORD. Yes.

Ms. NORTON. You know, if the OPM was serious, it would compare the costs incurred by that system, as well, since all of the data we have is that the older you get, the more likely you are to need real service in the FERS system, and those of us who are spring chickens just don't use it very much.

I don't know if anyone has any data on—and Ms. Wicks may because she, of course, would perhaps have observed whether people take sick leave, whether people have or report disabilities of various kinds as they age, and the rest that might comprise such an answer. I realize you may not have done——

Ms. WICKS. I couldn't say that I have hard data. I could say anecdotally, the court has certainly, as our work force agent—and I am sure everybody sees the same thing. We certainly see a lot more instances of disability and we see a lot more instances of family medical leave being used for health issues. So certainly, to your point, health care costs increase the older your work force gets.

The other thing we were discussing is the fact, as well, that the OPM argument, if people have to work longer then their income gets higher, so their retirement benefits are more costly to OPM.

It depends on what assumptions you're looking at to determine what the costs would be over time. But certainly one assumption could be that workers who work longer make more money, and they will cost more in retirement because the retirement benefits are higher, so it seems to us that it could really cut both ways.

Ms. NORTON. Certainly, if you were serious about making a cost argument, you're going to have to look at those and you're going to have to look at health care costs.

Ms. WICKS. Exactly.

Ms. NORTON. And you have to look at all of those in light of what amounted to a promise to leave people whole, which, of course, is a sacred promise.

The reason that we're able to float bonds, given the terrible indebtedness of the United States of America, and get people to buy them is because our word has been our bond. And employees, of course, have regarded that equally to be the case.

I want to just say for the record, I have very much been at one with our majority in living by PAYGO. And I note for the record that the Senate sure hasn't found it should live by PAYGO. Now, PAYGO is, of course, the system we adopted when President Clinton was in power, and essentially we do not have an effect on appropriation, which I hasten to add.

I don't see the argument for applying PAYGO to a retirement system. I mean, that entirely escapes me. So if you want to really pile on with these employees, then bring PAYGO to a retirement system, since we don't count PAYGO in the retirement system. And I would add to that, and the House is to be congratulated to try to press down the deficit. I would add to that I don't think any Member of Congress would want us to break a promise to Federal employees at the expense of PAYGO, and that should be the basis for an exemption.

Now, we've just had experience in this very subcommittee that I think proves that Congress will not break a promise to Federal employees. And that's who we're talking about. And I cite our experience with the GAO.

The GAO sought to withhold COLAs from GAO employees based on their version of pay, the—I don't want to call it "reform"—the pay-for-performance system. They were, of course, essentially guinea pigs for that system. But they weren't the only ones who were doing pay-for-performance; the DOD, a much larger work force for sure, was doing pay-for-performance. Homeland Security, or parts of it, was probably doing pay-for-performance.

Appropriation time came around—and this I want specifically to be noted for the record: It could not be avoided that Congress made the DOD employees whole when DOD deprived those employees of their COLA under the statute. But the small number of GAO employees were never made whole, and so these employees who suffered under the pay-for-performance system were unique in the Federal system, and there were COLAs owed them.

Now, we not only have made them whole; we have made them back-pay whole. That's what the promise of the United States of America is all about. We did not allow these Federal employees to be singled out even for a new system that we ourselves had authorized.

Now, I have indicated I have heard nothing from the record to say we authorized this difference. I'm still a law professor; I teach at Georgetown, and I respect the notion of textualism, because I teach textualism and what we call contextualism. That is to say, there are very few statutes which the courts—even the strictest of those who look to congressional intent are able to use only the bare words of the statute. And so, more often than not, we're forced to use contextualism in order to see, well, what really did Congress intend?

The OPM representative cited for me one sentence to support the notion that unequal treatment of Federal employees is justified, and worse, was intended by the Congress of the United States. She threw it back in our face.

When I asked her, all right, let's assume your hypothetical, given the unequal treatment that has resulted, would you recommend that we change it? And all she could say was—I had better bear in mind that I'm testifying for the administration—and so all she would say was that she was not making that recommendation.

She did not say she should not make the recommendation. She did not even say that there was no unequal treatment, because it's impossible to avoid the fact that there is unequal treatment.

And so I just want to say to you—I think these are the last witnesses; aren't they the last witnesses we have? I just want to say to you that I am going to find—we don't ask for exemptions from PAYGO. I haven't heard that PAYGO would apply here. All that I have heard is that it adds to the FERS system.

I do not believe that we would need to make a specific appropriation in order to make these employees whole. So I'm going to argue, first, that I don't believe a specific appropriation is necessary. And second, I'm going argue that even if it did, this would be the first time I know of where the promise of the United States has been violated knowingly by the United States and not fixed.

I thank all of you for your testimony. Those who can vote are now continuing to vote. And the Chair has given me permission to thank you for him as well and to tell you that this committee will proceed to try to do our very best to correct this wrong.

Thank you for your testimony.

[Whereupon, at 4:45 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing recorde follows:]

Questions for the Record
Hearing on Federal Employment Policies and Practices on Hiring Ex-offenders

Q 1: At the hearing, we discussed the regulatory guidelines available to all Federal agencies concerning the applications of individuals with prior drug-related convictions. Can you please provide the Committee with all applicable guidelines issued by the Office of Personnel Management relating to government-wide hiring practices?

A: As I noted at the hearing, the merit system principles provide that recruitment for civil service positions should be from qualified individuals from appropriate sources to achieve a workforce from all segments of society and that selection and advancement should be determined solely on relative ability, knowledge, and skills. Comprehensive guidance is provided to agencies in OPM's *Delegated Examining Operations Handbook: A Guide for Federal Agency Examining Offices*, which can be viewed at www.opm.gov/deu/handbook_2007/deo_handbook.pdf.

Q. 2: During your testimony, you agreed to perform a government-wide survey of the application process at each agency with respect to ex-offenders. Specifically, you were asked to inspect the questions asked by each agency about applicant's prior convictions. What is the status of this survey, and when can we reasonably expect a completed response?

A: OPM's Human Capital Officers have conducted an informal survey through their network of agency contacts, regarding what information agencies seek from job applicants about any prior criminal offenses. The responses we received indicate that agencies typically rely on the answers provided by applicants on form OF 306, "Declaration for Federal Employment," which asks whether the individual, during the last 10 years, has been convicted, imprisoned, placed on probation, or been on parole, and whether the individual is currently charged with any violation of law. Most agencies ask an applicant to complete this form only ***after*** they have decided to make an offer of employment. Some agencies, however, include this form in the initial application process. In any event, an affirmative answer to these questions is not necessarily disqualifying. The applicant would be asked to provide details about any violations of law, and the agency would decide whether to hire him or her, based on all of the information available, including an evaluation of the nexus, if any, between the violation and the requirements of the particular position the individual is applying for.

September 15, 2008

Danny K. Davis, Chairman
110th Congress Subcommittee on Federal Workforce, Postal Service and the
District of Columbia Committee for Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

RE: DC Revitalization Act

Dear Chairman Davis:

This letter is being written in sincerity for the consequences that have arisen from the 1987 – 1997 DC Revitalization Act. I have experienced financial, emotional and physical hardship as a result of the consequences of this Act. As a D.C. Superior Court Employee since July of 1989, I was excited about the possibility of my life after retirement and decided to proceed with my retirement plans based on information that I received from D.C. Superior Court's Human Resources Division (Evelyn Stephens). She processed my retirement based on the 18 years of service and gave me an amount that I believed was a comfortable and pleasurable amount for my retirement.

Shortly after retiring in September of 2007, I received a letter in November telling me that OPM was going to send me an interim amount until they decide what the correct amount should be. I was comfortable with that amount along with my SSI check. I was able to pay my bills, purchase my medicines, go to the doctors and buy food and clothing. Then I received another letter from OPM, stating that they had made a decision about how much I was to receive. That amount was not favorable, but I manage. Then in April 2008, I received another letter. This time it read OPM had had paid me too much money and now I had to pay it back. It will be taken out of my check each month until paid. Now I received $150.00 a month, which has really put me in a hardship. I have had to take money from my saving, investment fund and insurance policies to make my ends meet. After finding out that the DC Revitalization Act was the cause of this, my concern is that D.C. Superior Human Resource Division was not aware of this and are misleading persons to believe that they are to obtain a higher amount for retirement. Not only that, this was a month-long process and there should be a lot more effort put into making certain that retirees get current and accurate information regarding their life after retirement. Attached is all of the correspondence I received.

As mentioned before, I have experienced financial, emotional and physical hardship because of this and with the enormous cost of medical expenses, not to mention the cost of living on the rise, I have been misled and truly deceived. I do not take this lightly, because this is MY LIFE! I want to ensure that this does not

happen to anyone else and I am seeking legal action, because I should be compensated for the misinformation given to me and the hardship it has caused. Please call my at 202-547-1847 or reply in writing as to what you plan to do to extinguish the lives destroyed by DC Revitalization Act and the misinformation given out by D.C. Superior Court's HR Division. Thank your for listening and I look forward to hearing from you.

Respectfully,

Jeanette Walker

Jeanette Walker
Former D.C. Superior Court Worker

Attachments

Cc: Honorable Eleanor Holmes-Norton
Ann Wicks , Executive Officer, D.C. Courts
Danny K. Davis, Chairman of Subcommittee on Federal Workforce, Postal Service & the District of Columbia
Adrienne Poteat, Dep. Dir., Court Services & Offender Supervision Agency
Avis E. Buchanan, Dir., Public Defender Service for the District of Columbia